

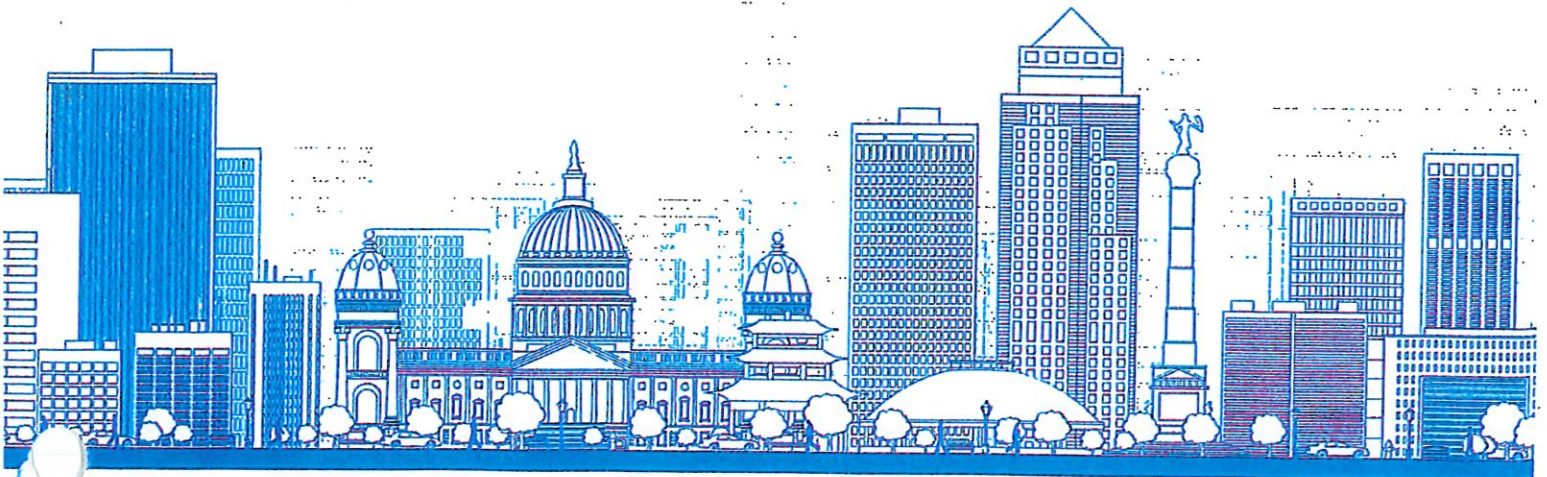
City of Des Moines

Zoning

CHAPTER 134

PUBLIC HEARING DRAFT

**Includes All Revisions
Approved by City Council
Through 12/16/2019**



Ordinance No. 15,816 dated 10/16/19 - Chapter 134
Ordinance No. 15,844 dated 12/16/19 - Amendments
Ordinance No. 15,865 dated 02/10/20 - Amendments

DRAFT AUGUST 19, 2019

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134-1.1 Title

This chapter of the municipal code is known and may be cited and referred to as the "zoning ordinance."

134-1.2 Authority

This zoning ordinance is adopted under the authority of Iowa Code Section 364.1 and Iowa Code Chapter 414.

134-1.3 Effective Date

The provisions of this zoning ordinance become effective on December 15, 2019, except as otherwise expressly stated.

134-1.4 Applicability and Jurisdiction

The provisions of this zoning ordinance apply to all public and private use and development of properties within the corporate limits of the city, except as provided by state or federal law or as otherwise expressly stated in this zoning ordinance, and excluding public right-of-way unless otherwise expressly stated.

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Purposes

134-1.5 Purposes

This zoning ordinance is adopted for the purposes of:

1.5.1 Protecting and promoting the public health, safety, morals and general welfare; and

1.5.2 Implementing the policies and goals of the comprehensive plan and other relevant, officially adopted plans of the city.

134-1.6 Minimum Requirements

1.6.1 The provisions of this zoning ordinance are the minimum requirements deemed necessary to carry out the zoning ordinance's stated purposes.

1.6.2 In addition to the requirements of this zoning ordinance, all uses, buildings and structures must comply with all other applicable ordinances, laws and regulations.

1.6.3 References in this zoning ordinance to other governmental regulations do not constitute a complete list of such regulations. These references do not imply any responsibility for the city to enforce regulations imposed by other government authorities.

134-1.7 Compliance Required

1.7.1 All lots created or modified must comply with all applicable provisions of this zoning ordinance.

1.7.2 The use of land, buildings and structures must comply with the provisions of this zoning ordinance.

1.7.3 Buildings and structures erected, located, moved, reconstructed, extended or structurally altered must comply with the provisions of this zoning ordinance.

1.7.4 No land shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of zoning compliance is issued by the zoning enforcement officer, stating that the land and use comply with the provisions of this zoning ordinance.

1.7.5 No change of use shall be made in any building or part thereof erected or structurally altered, and no permit shall be issued allowing for such change, unless the proposed change is in conformance with this chapter and until a certificate of zoning compliance has been issued for such change by the zoning enforcement officer.

1.7.6 Before the issuance of a certificate of zoning compliance, the applicant shall pay a fee in the amount set out in the schedule of fees approved by the city council. Applications for a certificate of zoning compliance for property wholly owned by the federal government are exempt from this fee payment requirement.

1.7.7 Nothing in this section shall prevent the continuance of a nonconforming use as authorized, unless a discontinuance is necessary for the safety of life or property.

1.7.8 A statement of review shall be issued upon request for nonconforming uses. Application for such statement for nonconforming uses shall be filed with the zoning enforcement officer, accompanied by affidavits of proof that such nonconforming use was not established in violation of the zoning ordinance(s), or amendments thereto, applicable at the time of establishment of such use.

134-1.8 Conflicting Provisions

1.8.1 STATE OR FEDERAL REGULATIONS

If the provisions of this zoning ordinance are inconsistent with or conflict with state or federal law, including Iowa Code Chapter 8C, the Spectrum Act, and similar FCC regulations, the applicable state and federal law or regulation governs.

1.8.2 OTHER CITY REGULATIONS

If the provisions of this zoning ordinance are inconsistent with one another or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision governs unless otherwise expressly stated. The more restrictive provision is the one that imposes more stringent controls.

1.8.3 PRIVATE AGREEMENTS AND COVENANTS

The city is not responsible for monitoring or enforcing agreements or covenants among private parties. If the provisions of this zoning ordinance impose a greater restriction than imposed by an agreement or covenant among private parties, the provisions of this zoning ordinance govern.

134-1.9 Language and Interpretation

1.9.1 CONJUNCTIONS

Unless the context otherwise expressly indicates, conjunctions have the following meanings in this chapter:

- A. "And" indicates that all connected items or provisions apply.
- B. "Or" indicates that the connected items or provisions may apply singularly or in combination.

1.9.2 ILLUSTRATIONS

Illustrations are provided for convenience and reference only and do not define or limit the scope of any provision of this zoning ordinance. In case of any difference of meaning or implication between the text of this zoning ordinance and any figure or illustration, the text governs.

1.9.3 VERSIONS AND CITATIONS

All references in this zoning ordinance to other city or state regulations are to be construed as referring to the most up-to-date version and citation for those regulations or successor regulations, unless otherwise expressly indicated. When the referenced regulations have been repealed and not replaced by other successor regulations, zoning ordinance requirements for compliance are no longer in effect.

1.9.4 LISTS AND EXAMPLES

Unless otherwise expressly indicated, lists of items or examples that use "including," "such as," or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

1.9.5 DELEGATION OF AUTHORITY

Whenever a provision appears requiring the head of a department or another officer or employee of the city to perform an act or duty, that provision will be construed as authorizing the department head or officer to delegate that responsibility to others over whom they have authority. Delegation of authority is not allowed when the provisions of this zoning ordinance expressly prohibit such delegation.

1.9.6 PUBLIC OFFICIALS AND AGENCIES

Unless otherwise expressly stated, all employees, public officials, and boards and commissions to which references are made are those of the city.

coverage layer constitutes the city's official zoning map.

1.10.2 MAINTENANCE AND UPDATES

The community development director is responsible for directing revisions to the official zoning map to reflect its amendment as soon as possible after the effective date of any ordinance establishing or amending zoning district boundaries.

1.10.3 BOUNDARIES

Zoning boundary lines must be described by legal description or by a map that accompanies the ordinance establishing the district or amending the district boundaries. When a legal description is used, the boundary is deemed to extend to the centerline of abutting streets. When a map is used, boundary lines must be established by dimensions, property lines, recorded lot lines, or the centerline of abutting streets, alleys, or railroad rights-of-way, as those features were of record at the time of adoption.

1.10.4 MAP INTERPRETATIONS

Where any uncertainty exists about a zoning boundary that was established by legal description, the legal description accompanying the amending ordinance governs. In other cases, the community development director is authorized to make an interpretation of the boundaries. The following rules apply to all zoning map interpretations:

- A. Boundaries shown as approximately following the centerlines of streets, highways, alleys or other public rights-of-way must be construed to follow such centerlines.
- B. Boundaries shown as approximately following platted lot lines must be construed as following such lot lines.
- C. Boundaries shown as approximately following city limit lines must be construed as following those lines.
- D. Boundaries shown as approximately following railroad lines must be construed to be midway between the main tracks.
- E. Boundaries shown as approximately following the shoreline or centerline of a river, stream, lake or other watercourse must be construed as following the actual shoreline or centerline of the watercourse. If, after establishment of the boundary, the shoreline or centerline of the watercourse moves as a result of natural processes, the boundary must be construed as moving with the shoreline or centerline of the watercourse.

134-1.10 Zoning Map

1.10.1 ESTABLISHMENT

The location and boundaries of the districts defined in this zoning ordinance must be established by ordinance and shown on a geographic coverage layer that is maintained as part of a geographic information system (GIS) under the direction of the community development director. This "zoning" geographic

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Transitional Provisions

- F. Boundaries shown as approximately following flood plain and floodway designations pursuant to chapter 50 of this code must be construed to follow such lines.
- G. Where one parcel of property is divided into two or more portions because of different zoning district classifications, each portion shall be used independently of the other in its respective zoning classification, and for the purpose of applying the regulations of this chapter, each portion shall be considered as if in separate and different ownership. Alternatively, the entire parcel may be used as permitted by the regulations applicable to the most restrictive zoning classification. However, nothing in this subsection shall be construed as permitting residential use of any property within any I district classification or use of any property within any F district classification for any purpose not permitted by article 3 of this chapter and Chapter 50 of this code.
- B. Complete applications for variances, exceptions, special permits, conditional uses, and PUDs that are pending approval on the effective date specified in section 134-1.3 of this article must be reviewed wholly under the terms of the zoning ordinance in effect immediately preceding the effective date specified in section 134-1.3 of this article.
- C. The community development director is authorized to issue permits for construction or development approved in accordance with the deadlines set forth in this section even if such building, development or structure does not fully comply with provisions of this zoning ordinance. If building is not commenced and completed within the time allowed under the permit and any authorized permit extension, then the building, development or structure may be constructed, completed and occupied only if it complies with the regulations of this zoning ordinance.
- D. Complete applications for zoning map amendments for any zoning district other than PUD that are pending approval on October 14, 2019, must be reviewed wholly under the terms of the zoning ordinance in effect immediately preceding the effective date specified in section 134-1.3 of this article.

1.10.5 ANNEXED LAND

When land is annexed or otherwise brought into the zoning jurisdiction of the city, it shall be classified in the A (Agricultural) district or the zoning district classification may be changed by amendment in accordance with this chapter and based on the comprehensive plan, existing land uses, any applicable annexation agreement or other relevant considerations.

134-1.11 Transitional Provisions

The provisions of this section address the transition to this zoning ordinance from the zoning ordinance in effect immediately before the effective date specified in section 134-1.3 of this article.

1.11.1 APPLICATIONS, PERMITS AND APPROVALS

- A. Any building, development or structure for which a building permit was issued or a complete building permit application had been accepted for processing before the effective date specified in section 134-1.3 of this article may be completed in conformance with the issued building permit and other applicable permits and conditions, even if such building, development or structure does not comply with provisions of this zoning ordinance. If the building, development or structure is commenced but not completed within the time allowed under the original building permit and any authorized permit extension, the building, development or structure may be constructed, completed and occupied only if it complies with the regulations of this zoning ordinance.

1.11.2 VIOLATIONS

The adoption of this zoning ordinance does not affect any pending or future suit, proceeding or prosecution of, or action to abate, violations of the previous zoning ordinance that occurred before the effective date specified in section 134-1.3 of this article.

134-1.12 Severability

If one or more provisions of this ordinance, or the application of this ordinance is held to be unlawful, invalid, unenforceable, or preempted by applicable state or federal law or regulations, including Iowa Code Chapter 8C, the Spectrum Act, and similar FCC regulations, such provisions are deemed to be severed from this zoning ordinance. The remaining ordinance provisions remain in full force and effect.

Chapter 134. Zoning

ARTICLE 2. DISTRICTS

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134-2.1 General

2.1.1 INTENT

In addition to the general intent and purposes of section 134-1.5 of this chapter, the city is divided into districts as established in this section to apply a specific set of regulations to each category of lots. Further, these different districts are intended:

- A. To achieve a balanced pattern of development, providing for mixed-use development that encourages daily uses within walking or biking distance.
- B. To require high quality development that draws on the distinctive characteristics of the city, neighborhood, and district.
- C. To achieve development that is appropriate in scale and intensity for neighborhoods and districts within the city.
- D. To ensure that a mix of housing types and sizes can be developed to meet the needs of the entire community.
- E. To promote sustainability goals, such as reductions in vehicle miles traveled (VMT) and greenhouse gas (GHG) emissions through a focus on pedestrian-friendly design, transit-supportive development, and a mix of daily uses within a pedestrian-oriented center.
- F. To provide a framework for greater use of public transit and for the development of transit-oriented neighborhoods where appropriate.
- G. To regulate and restrict the location of trades and industries and the location of buildings designed for specified uses.
- H. To ensure that adequate amounts and types of open space are available to all residents within walking distance of their homes and workplaces.
- I. To protect the natural environment, including reducing air and water pollution, and to respond to the threat of climate change.

2.1.2 APPLICABILITY

- A. No building, structure or land may be used and no building or structure may be erected or altered, except in conformity with the regulations prescribed in these regulations for the district in which such building, structure or land is located.
- B. The provisions of these regulations apply to any use or development of land or buildings that is constructed/commenced, reconstructed/

recommenced, relocated, or expanded after the effective date of this ordinance.

134-2.2 Establishment of Districts

The following districts are established to regulate the location of distinct mixes of building forms and uses permitted within the city. Refer to [article 3 of this chapter](#) for uses and [article 2 of chapter 135 of this code](#) for building types permitted within each district.

2.2.1 DOWNTOWN (DX) DISTRICTS

The DX districts are established to address the mix of building forms and uses appropriate for each of the different districts within the downtown area.

- A. **DX1 District.** DX1 is intended for the highest intensity of activity in the downtown, where mixed-use buildings include offices, groundfloor storefronts with shopping, services, and restaurants, and residential and lodging.
- B. **DX2 District.** DX2 is intended for the mid-level intensity of activity in downtown, where storefronts, offices, and residences are mixed.
- C. **DXR District.** DXR is intended for the mainly residential neighborhoods of the downtown, surrounding the downtown, and across the rivers from downtown.

2.2.2 MIXED-USE (X) DISTRICTS

The X districts establish an appropriate mix of building forms and uses to enhance existing and create new compact, walkable nodes and corridors throughout the city.

- A. **MX1 District.** MX1 is intended for the mixed-use, neighborhood-scale nodes and corridors within the city, where daily uses are accessible by walking from surrounding neighborhoods.
- B. **MX2 District.** MX2 is intended for mixed-use, regional-scale nodes and corridors within the city, where residents and visitors may access multiple uses by walking.
- C. **MX3 District.** MX3 is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale.
- D. **RX1 District.** RX1 is intended for transitional areas between MX districts and N districts, providing for residential and office buildings at a scale and intensity appropriate for corridors adjacent to low-scale neighborhoods.

- E. RX2 District.** RX2 is intended for transitional areas between MX districts and N districts, providing for residential and office buildings at a scale and intensity higher than RX1.
- F. CX District.** CX is intended for nodes and corridors with larger-scale single-use commercial accommodating higher levels of vehicular traffic than MX districts and more intensive commercial uses, especially with outdoor sales and storage.
- G. EX District.** EX is intended for locations and corridors with a mix of light industrial and heavier commercial uses, accommodating higher levels of vehicular traffic than MX districts a predominance of mid-scale employment uses, such as office, low intensity industrial, and warehouse spaces associated with offices.

2.2.3 INDUSTRIAL (I) DISTRICT

The I districts establish a mix of uses and associated site development standards pertaining to manufacturing, warehousing, and other industrial uses.

- A. I1 District.** I1 is intended for general industrial uses, warehousing, and transportation terminals.
- B. I2 District.** I2 is intended for general and higher intensity industrial uses as well as warehousing and transportation terminals.

2.2.4 PUBLIC, CIVIC, AND INSTITUTIONAL (P) DISTRICTS

The P districts are established to provide specific locations for public, private, quasi-public, and institutional facilities, including parks and open space.

- A. P1 District.** P1 is intended for open space, including permanent parks and recreation areas.
- B. P2 District.** P2 is intended for civic and institutional facilities, such as religious assembly places, cultural or arts centers, community centers, schools, infrastructure, recreational facilities, and other institutional facilities. Infrastructure includes public or private infrastructure, including rail corridors and utility corridors or sites.

2.2.5 NEIGHBORHOOD (N) DISTRICTS

The N districts are established to protect the character of existing residential neighborhoods and set the character of new neighborhoods throughout the city.

- A. N1a District.** N1a is intended for large lots for mostly single-household residential houses with a more flexible building form pursuant to House A building type in section [135-2.13 of this code](#).

- B. N1b District.** N1b is intended for larger lots for mostly single-household residential houses within a more traditional neighborhood setting pursuant to House A building type in section [135-2.13 of this code](#).
- C. N2a District.** N2a is intended for contemporary, large size lots for single- and two-household residential houses within a more flexible building form and located in contemporary neighborhoods pursuant to House A building type in section 135-2.13 of this code.
- D. N2b District.** N2b is intended for contemporary, mid-size lots for single- and two-household residential houses within a more flexible building form and located in contemporary neighborhoods pursuant to House A building type in section 135-2.13 of this code.
- E. N3a District.** N3a is intended to preserve the scale and character of residential neighborhoods developed predominantly during the 1950s, 1960s, and 1970s, typically in the ranch or split-level style pursuant to House B building type in section [135-2.14 of this code](#).
- F. N3b District.** N3b is intended to preserve the scale and character of residential neighborhoods developed predominantly during the 1950s through 1970s typically in the ranch, split-level, or cottage style pursuant to House B building type in section [135-2.14 of this code](#) and House C in section [135-2.15 of this code](#).
- G. N3c District.** N3c is intended to preserve the scale and character of residential neighborhoods developed predominantly in the cottage or worker cottage style pursuant to House C building type in section [135-2.15 of this code](#).
- H. N4 District.** N4 is intended to preserve the scale and character of residential neighborhoods developed predominantly with a mix of cottages, constructed mainly of masonry or stone pursuant to House C building type in section [135-2.15 of this code](#).
- I. N5 District.** N5 is intended to preserve the scale and character of neighborhoods developed with a mix of bungalow and two-story houses, predominantly in the Victorian, Revival, and Arts and Crafts styles pursuant to House D building type in section [135-2.16 of this code](#).
- J. NM District.** NM is intended to accommodate mobile home parks in specific locations within the city.

134-2. DISTRICTS

Establishment of Districts

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2.2.6 NUMBER OF HOUSEHOLD UNITS IN N DISTRICTS

- A. N District Extension -2.** For N districts locations labeled with a "-2" extension, the maximum number of household units permitted per lot is two, pursuant to section [134-3.1.2 of this chapter](#). Refer to the building type regulations in [article 2 of chapter 135 of this code](#) for the permitted building types and configuration of the units within the building types.
- B. N District Extension -4.** For N districts locations labeled with a "-4" extension, the maximum number of household units permitted per lot is four, pursuant to section [134-3.1.2 of this chapter](#). Refer to the building type regulations in [article 2 of chapter 135 of this code](#) for the permitted building types and configuration of the units within the building types

2.2.7 NEIGHBORHOOD MIX (NX) DISTRICTS

The NX districts are established for residential neighborhoods with an existing mix of residential buildings and uses or with the potential for infill of a mix of residential buildings and uses.

- A. NX1 District.** NX1 is intended for a mix of single- and smaller-scaled multiple-household uses and building forms to preserve the scale and character of the existing neighborhood while allowing for new infill housing.
- B. NX2 District.** NX2 is intended for a mix of single-household houses with appropriately scaled and detailed multiple-household building types in the same neighborhood.
- C. NX2a District.** NX2a is intended for the same form as NX2, but, in addition to the typical residential uses allowed in NX2 includes commercial home occupations per section [134-3.9.4 of this chapter](#).
- D. NX3 District.** NX3 is intended for a variety of heights of multiple-household buildings, including taller buildings, located along corridors and on the edges of neighborhoods.

2.2.8 AGRICULTURE (A) AND FLOOD (F) DISTRICTS

- A. A District.** A is intended for low density uses in agricultural areas.
- B. F District.** F is intended for flood plain and floodways pursuant to chapter 50 of this code.

2.2.9 PUD, PLANNED UNIT DEVELOPMENT (LEGACY) DISTRICT

- A.** No applications to establish new PUD zoning districts or to expand the boundaries of existing PUD zoning districts may be accepted for processing after the effective date specified in section [134-1.3 of this chapter](#), except that any PUD rezoning applications that were in process on the effective date specified in section [134-1.3 of this chapter](#) may continue to be processed and may be approved in accordance with the transitional provisions of section [134-1.11 of this chapter](#).
- B.** Land classified in a PUD zoning district on the effective date specified in section [134-1.3 of this chapter](#) will continue to be classified in a PUD district and governed by the ordinance approving the PUD zoning designation and all applicable conditions of approval, conceptual plans, and development plans associated with the approved development until the subject PUD is rezoned to another (non-PUD) classification.
- C.** All amendments to existing PUDs and conceptual or final development plans for existing PUDs must be reviewed and approved by the city council after review and recommendation of the plan and zoning commission, following the same general process as a zoning map amendment section [134-6.3 of this chapter](#).

2.2.10 VEHICLE SALES AND RENTAL DISPLAY LIMITATION

- A. X and I Districts Extension -V.** For X and I district locations labeled with a "-V" extension, vehicle sales and rental display uses are prohibited pursuant to section [134-3.1.2 of this chapter](#).

Chapter 134. Zoning

ARTICLE 3. USES

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134-3.1 Principal Uses

3.1.1 TABLE OF ALLOWED USES

Principal uses are allowed in accordance with Table 134-3.1-1 of this article.

3.1.2 INTERPRETING THE USE TABLE

A. Use Classification System. Uses are listed in the first column of Table 134-3.1-1 of this article. This zoning ordinance classifies uses into categories and subcategories, which are defined in section 134-3.2 of this article. In some cases, specific use types are listed in addition to the use categories and subcategories. The final "Reference" column of Table 134-3.1-1 of this article includes a cross-reference to the applicable use definition and any applicable supplemental use regulations.

B. Permitted Uses. Uses identified with a ● are permitted as-of-right in the subject zoning district, subject to compliance with any supplemental regulations identified in the final column of Table 134-3.1-1 of this article and with all other applicable regulations of this zoning ordinance.

C. Conditional Uses. Uses identified with ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of section 134-6.4 of this article.

D. Multiple Units. Uses identified with a "②" or a "④" are permitted only in zoning districts with a map symbol (abbreviation) that includes a "-2" or "-4" extension, respectively. An N5-4 district, for example, allows up to four household units per lot.

E. Prohibited Uses. Uses identified with an "- " are expressly prohibited. Uses that are not listed in the table and that cannot be reasonably interpreted pursuant to section 134-3.2 of this article, to fall within any defined use category or subcategory are also prohibited.

F. Reference. The final "Reference" column of Table 134-3.1-1 of this article includes a cross-reference to the use definition and any applicable supplemental use regulations that apply to the subject use. Unless otherwise expressly stated, compliance with supplemental use regulations is required regardless of whether the use is permitted as-of-right or requires conditional use approval.

G. Accessory Uses. Accessory uses are not regulated by Table 134-3.1-1 of this article. Customary accessory uses are allowed in conjunction with principal uses permitted by right or by conditional use approval, subject to compliance with all

applicable accessory use regulations of section 134-3.9 of this article.

H. Other Uses. Other uses are identified in Table 134-3.1-1 of this article and are subject to the supplemental regulations of section 134-3.8 of this article.

Principal Uses

TABLE 134-3.1-1. PRINCIPAL USE TABLE

KEY: ●=permitted by right | ●=permitted on upper floors only | ○=requires conditional use approval | *supplemental use regulations apply | --prohibited
 ②=permitted by right where district includes “-2” extension | ④=permitted by right where district includes “-4” extension
 ⑤ = permitted except where district includes “-V” extension | ⑧ = permitted with conditional use approval in NX2a district only
 ⑩ = permitted on major commercial corridors only

TABLE 134-3.1-1. PRINCIPAL USE TABLE

USE CATEGORY Use Subcategory Specific Use Type	DISTRICTS																			
	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2
Utilities and Public Service Facilities																				
Minor	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○
Major	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
COMMERCIAL																				
Adult Entertainment	-	-	-	-	-	-	-	-	-	-	-	○*	○*	-	-	-	-	-	-	-
Animal Service																				
Boarding	●	-	-	-	-	-	●	-	-	●	●	●	●	-	-	-	-	-	-	-
Grooming	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-
Stable	●	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Veterinary	●	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-
Assembly and Entertainment																				
Small	-	●	●	●	○	●	●	○	●	●	●	-	-	-	-	○	○	-	○	-
Large	-	●	●	●	-	●	●	-	●	●	●	-	-	-	-	○	○	-	○	-
Events Center	-	●	●	●	-	●	●	-	●	●	●	-	-	-	-	○	○	-	○	-
Broadcast or Recording Studio	-	●	●	-	-	●	●	-	●	●	●	●	●	-	-	-	-	-	●	-
Business or Trade School	-	●	●	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-
Commercial Service																				
Consumer Maintenance and Repair	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Personal Service	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Studio or Instructional Service	-	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-
Day Care	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Day Services, Adult	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Eating and Drinking Places																				
Restaurant	-	●	●	●	●	●	●	●	●	●	●	-	-	-	Ⓢ	-	-	○	○	-
Bar	-	○	○	○	-	○	○	-	○	○	-	-	-	-	-	-	-	○	○	-
Financial Service (except as below)	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Ball Bonds	-	-	-	-	-	●	-	-	●	-	-	-	-	-	-	-	-	-	-	-
Delayed Deposit Service	-	-	-	-	-	●	-	-	●	-	-	-	-	-	-	-	-	-	-	-
Pawnbroker	-	-	-	-	-	●	-	-	●	-	-	-	-	-	-	-	-	-	-	-
Funeral or Mortuary Service	-	-	-	-	-	-	●	-	●	●	●	●	-	-	-	-	-	-	-	-
Lodging																				
Bed & Breakfast	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	-	-	-	○*	○*	○*	○*	-	-	-
Hotel/Motel	-	●	●	●	-	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-
Short-Term Commercial Rental	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	-	-	-	○*	○*	○*	○*	-	-	-

KEY: ●=permitted by right | ○=permitted on upper floors only | ○=requires conditional use approval | *supplemental use regulations apply | --=prohibited

②=permitted by right where district includes "2" extension | ④=permitted by right where district includes "4" extension

Ⓢ = permitted except where district includes "V" extension | Ⓢ = permitted with conditional use approval in NX2a district only

Ⓢ = permitted on major commercial corridors only

134-3. USES

Principal Uses

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TABLE 134-3.1-1. PRINCIPAL USE TABLE

USE CATEGORY Use Subcategory Specific Use Type	DISTRICTS																			
	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2
Office																				
Business or Professional	-	●	●	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	●
Medical	-	●	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	●
Parking, Non-Accessory																				
Surface Parking Lot	-	○*	○*	○*	○*	○*	○*	-	○*	●	●	●	●	-	-	-	-	-	○*	○*
Parking Structure	-	●	●	●	●	●	●	-	●	●	●	●	●	-	-	-	-	-	-	○*
Retail Sales																				
Limited	-	●	●	●	●	●	●	●	●	●	-	-	-	-	-	-	-	-	-	-
General	-	●	●	●	-	●	●	-	-	●	-	-	-	-	-	-	-	-	-	-
Large-Format	-	●	○	-	-	-	-	-	-	●	-	-	-	-	-	-	-	-	-	-
Self-Service Storage	-	-	●	●	-	○*	○*	-	-	●	●	●	●	-	-	-	-	-	-	-
Sign, General Advertising	-	-	-	-	-	Ⓜ	Ⓜ	-	-	Ⓜ	Ⓜ	Ⓜ	Ⓜ	-	-	-	-	-	-	-
Sports & Recreation, Private/Participant																				
Indoor	-	●	●	●	●	●	●	-	-	●	●	●	●	-	-	-	-	-	○	○
Outdoor	-	-	-	●	-	-	●	-	-	●	●	●	●	-	-	-	-	-	○	○
Vehicle Sales and Service																				
Fuel Station	-	-	○	○	-	○	●	-	-	●	●	●	●	-	-	-	-	-	-	-
Vehicle Sales	-	-	-	-	-	-	Ⓥ	-	-	Ⓥ	-	Ⓥ	Ⓥ	-	-	-	-	-	-	-
Vehicle Rental	-	Ⓥ	Ⓥ	Ⓥ	-	Ⓥ	Ⓥ	-	-	Ⓥ	Ⓥ	Ⓥ	Ⓥ	-	-	-	-	-	-	-
Vehicle Maintenance/Repair, Minor	-	-	-	-	-	-	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-
Vehicle Maintenance/Repair, Major	-	-	-	-	-	-	-	-	-	●*	-	●*	●*	-	-	-	-	-	-	-
INDUSTRIAL																				
Fabrication and Production																				
Artisan	●*	●*	●*	●	●*	●*	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-
Limited	-	-	○*	○*	○*	○*	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-
General	-	-	-	-	-	-	-	-	-	-	-	●*	●*	-	-	-	-	-	-	-
Intensive	-	-	-	-	-	-	-	-	-	-	-	-	○*	-	-	-	-	-	-	-
Industrial Service																				
Light	-	-	-	-	-	-	●*	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-
Intensive	-	-	-	-	-	-	-	-	-	-	-	●*	●*	-	-	-	-	-	-	-

KEY: ●=permitted by right | ●=permitted on upper floors only | ○=requires conditional use approval | *supplemental use regulations apply | --=prohibited
 ②=permitted by right where district includes "2" extension | ④=permitted by right where district includes "4" extension
 Ⓥ = permitted except where district includes "V" extension | Ⓜ = permitted with conditional use approval in NX2a district only
 Ⓜ = permitted on major commercial corridors only

TABLE 134-3.1-1. PRINCIPAL USE TABLE

USE CATEGORY	DISTRICTS																					
Use Subcategory Specific Use Type	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	F	Reference
Storage, Distribution and Wholesaling																						
Equipment & Material Storage, Outdoor	-	-	-	-	-	-	-	-	-	-	-	⊙*	⊙*	-	-	-	-	-	-	⊙*	-	134-3.6.3
Trucking & Transportation Terminal	-	-	-	-	-	-	-	-	-	-	-	⊙*	⊙*	-	-	-	-	-	-	⊙*	-	134-3.6.3
Warehouse	-	-	-	-	-	-	-	-	-	⊙*	⊙*	⊙*	⊙*	-	-	-	-	-	-	⊙*	-	134-3.6.3
Wholesale sales and distribution	-	-	-	-	-	-	-	-	-	⊙*	⊙*	⊙*	⊙*	-	-	-	-	-	-	-	-	134-3.6.3
Junk or Salvage Yard	-	-	-	-	-	-	-	-	-	-	-	-	⊙*	-	-	-	-	-	-	-	-	134-3.6.4
Mining or Mineral Processing	-	-	-	-	-	-	-	-	-	-	-	-	⊙	-	-	-	-	-	-	-	⊙	134-3.6.5
AGRICULTURAL																						
Community and Urban Garden	⊙	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	134-3.7.1
Crop Production	⊙	-	-	-	-	-	-	-	-	⊙	⊙	⊙	⊙	-	-	-	-	-	⊙	⊙	⊙	134-3.7.2
Nursery or Truck Farm	⊙	-	-	-	-	-	-	-	-	⊙	⊙	⊙	⊙	-	-	-	-	-	⊙	⊙	⊙	134-3.7.3
OTHER																						
Alcoholic Liquor, Wine, or Beer Sales	-	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	⊙*	-	-	-	-	⊙*	-	-	-	⊙*	⊙*	-	134-3.8.1
Consumer Fireworks Sales	-	-	-	-	-	-	-	-	-	-	-	⊙*	⊙*	-	-	-	-	-	-	-	-	134-3.8.2
Wireless Telecommunications	Refer to article 4 of this chapter.																					

KEY: ⊙=permitted by right | ⊙*=permitted on upper floors only | ⊙=requires conditional use approval | ⊙*=supplemental use regulations apply | --=prohibited
 ②=permitted by right where district includes "2" extension | ④=permitted by right where district includes "4" extension
 ⑤ = permitted except where district includes "V" extension | ⑥ = permitted with conditional use approval in NX2a district only
 ⑦ = permitted on major commercial corridors only

134-3. USES

Principal Uses

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TABLE 134-3.1-2. ALCOHOLIC LIQUOR, WINE OR BEER SALES

USE	Alcoholic Liquor Sales			Wine or Beer Sales		
	Districts					
	DX1, DX2, MX1, MX2, DXR	MX3, CX, P1, P2	RX1, RX2, NX2a	DX1, DX2, MX1, MX2, DXR	MX3, CX, P1, P2	RX1, RX2, NX2a
Retail Sales						
Limited	Not allowed	○ 40%/500 1,320		○ 40%/150	○ 40%/150	
General	40%/75	40%/75		40%/75	40%/75	
Large	40%/75	40%/75		40%/75	40%/75	
Fuel Station	Not allowed	○ 40%/500 1,320	Not allowed	40%/150	40%/150	Not allowed
Liquor Store		○ 500/ 1,320		Not allowed	○ 150	
Tobacco Store		○ 25%/500 1,320		○ 25%/150	○ 25%/150	
Restaurant	50%/75	50%/75	○ 50%/75	50%/75	50%/75	○ 50%/75
Bar	○ 150	○ 150	Not allowed	○ 150	○ 150	Not allowed
Other Uses with Sales for On-Premise Consumption	○	○ 40%/150		○	○ 40%/150	

Table Notes

○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of [134-6.4 of this chapter](#).

40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

50% = at least 50% of the gross receipts must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.

25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.

75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

1,320 = the licensed premises occupied by such use must be separated by at least 1,320 feet from the property line of the lot where any other controlled use engaged in the sale of alcoholic liquor is located. In the DX1, DX2, and DXR districts, this condition is only applicable to liquor stores.

134-3.2 Use Classifications

3.2.1 GENERAL

This section establishes and describes the use classification system used to classify principal uses in this zoning ordinance.

3.2.2 USE CATEGORIES

This zoning ordinance classifies principal land uses into six major groupings as described in sections 134-3.3 of this article through 134-3.8 of this article. These major groupings are referred to as "use categories." The use categories are as follows:

- A. Residential. See section 134-3.3 of this article.
- B. Public, Civic and Institutional. See section 134-3.4 of this article.
- C. Commercial. See section 134-3.5 of this article.
- D. Industrial. See section 134-3.6 of this article.
- E. Agricultural. See section 134-3.7 of this article.
- F. Other. See section 134-3.8 of this article.

3.2.3 USE SUBCATEGORIES

Each use category is further divided into more specific "subcategories." Use subcategories classify principal land uses and activities based on common functional, product or physical characteristics, such as the type and amount of activity, the type of customers or residents, and how goods or services are sold or delivered and site conditions.

3.2.4 SPECIFIC USE TYPES

Some use subcategories are further broken down to identify specific types of uses that are regulated differently than the subcategory as a whole.

3.2.5 DETERMINATION OF USE CATEGORIES AND SUBCATEGORIES

- A. The community development director is authorized to classify uses on the basis of the use category, subcategory and specific use type descriptions of this article.
- B. When a use cannot be reasonably classified into a use category, subcategory or specific use type, or appears to fit into multiple categories, subcategories or specific use types, the community development director is authorized to determine the most similar and thus most appropriate use category, subcategory or specific use type based on the actual or projected characteristics of the principal use or activity in relationship to the use category, subcategory and specific use type

descriptions provided in this article. In making such determinations, the community development director must consider:

1. The types of activities that will occur in conjunction with the use;
 2. The types of equipment and processes to be used;
 3. The existence, number and frequency of residents, customers or employees;
 4. Parking demands associated with the use; and
 5. Other factors deemed relevant to a use determination.
- C. If a use can reasonably be classified in multiple categories, subcategories or specific use types, the community development director is authorized to categorize each use in the category, subcategory or specific use type that provides the most exact, narrowest and appropriate "fit."

134-3.3 Residential Use Category

This category includes uses that provide living accommodations for one or more persons. The residential use subcategories are as follows.

3.3.1 HOUSEHOLD LIVING

Residential occupancy of a household unit by a household. When household units are rented, tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered household living; they are considered a form of lodging. Households involving residential rental shall also comply with all requirements of chapter 60 of this code.

3.3.2 GROUP LIVING

Residential occupancy of a building or any portion of a building by a group other than a household, subject to compliance with the occupancy limitations set forth in the International Property Maintenance Code. The number of occupants per group living use shall not exceed the number of occupants permitted by the minimum area requirements of the occupancy limitations set forth in the International Property Maintenance Code or any more restrictive number of occupants specified in this section. Structures containing group living uses contain individual rooms with private or shared bathroom facilities and may also contain shared kitchen facilities, or common dining and living areas for residents. Residents may or may not receive any combination of care, training, or treatment, but those receiving such services must reside at the

Residential Use Category

site. Examples of group living use types include assisted living facilities. When household units are rented, tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered group living; they are considered a form of lodging. Group living uses involving rental shall also comply with all requirements of chapter 60 of this code.

A. Assisted Living Facility. An assisted living facility is a group living use consisting of individual rooms or household units where meals and assistance with daily living activities are provided to the residents, who may be elderly persons. Assisted living facilities must be licensed as a residential care facility, intermediate care facility or nursing facility under Iowa Code chapter 135C.1. For purposes of this chapter, hospice programs licensed under Iowa Code chapter 135J are considered assisted living facilities.

B. Correctional Placement Residence

1. A correctional placement residence is a group living use occupied by three or more persons who have been convicted of public offenses and who have been released to such facility during any period of:
 - a. Probation;
 - b. Work release while serving a sentence in a correctional institution; or
 - c. Assignment to the judicial district department of correctional services after receiving a deferred sentence.
2. Correctional placement residences are subject to the following supplemental use regulations:
 - a. The proposed location must provide residents with adequate access to public transportation.
 - b. A permit for such use is subject to reconsideration by the board of adjustment if at any time the community development director determines that the facility has become detrimental to the neighborhood.
 - c. Each bedroom within the residence must contain
 - i. Beds for no more than four residents,
 - ii. At least 80 square feet of usable floor space per bed, except a minimum of 60 square feet of usable floor space per bed is permitted for those correctional placement residences that

are constructed after July 1, 1991 and are owned or leased and administered by the fifth judicial district department of correctional services as part of a community-based correctional program under Iowa Code section 905, and

- iii. Usable floor space of at least eight feet in any major dimension. For purposes of calculating usable floor space, any parts of a room having less than seven feet of ceiling height may not be counted. Rooms in which beds are located may not be used for purposes other than bedrooms. The regulations of this paragraph do not apply to facilities licensed and regulated as health care facilities by the state department of public health.
- d. Each such facility must contain at least one lavatory and one toilet per 10 residents or fraction thereof and one tub or shower per 15 residents or fraction thereof. At least one bathroom with tub or shower, toilet and lavatory must be located on each floor that is occupied by resident bedrooms. The regulations of this paragraph do not apply to facilities licensed and regulated as health care facilities by the state department of public health.
- e. Each such facility must contain areas for dining and recreational purposes. When space is used for multi-purpose dining and recreational purposes, the area must include at least 30 square feet of floor area per resident bed. When space is provided exclusively for dining, the area must include at least 15 square feet of floor area per resident bed. When space is provided to be used exclusively for recreational purposes, the area shall total at least 15 square feet of floor area per resident bed and at least 50% of the required area must be in one room. The regulations of this paragraph do not apply to facilities licensed and regulated as health care facilities by the state department of public health.
- f. Each correctional placement residence must provide supervision 24 hours per day by persons responsible for the care of the residents.

- g. New correctional placement residences may not be located within 1,320 feet of any existing family home, home- and community-based services waiver recipient residence, correctional placement residence, or temporary shelter, except when such facilities are separated from by a freeway or river.

C. Family Home

1. A family home is any of the following:
 - a. A community-based residential home licensed as a residential care facility under Iowa Code chapter 135C, or as a child foster care facility under Iowa Code chapter 237, to provide room and board, personal care, rehabilitation services, and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury, as defined by Iowa Code chapter 414.22, and any support personnel. A family home does not mean an individual foster care family home licensed under Iowa Code chapter 237.
 - b. A home for persons with disabilities as defined by Iowa Code chapter 504C.
 - c. An elder group home as defined by Iowa Code chapter 231B.
 - d. A residential facility, occupied by three or more persons under the supervision of one or more persons, wherein the individuals supervised have disabilities other than those specified in subsection (a) above that hinder their functioning in society and require the protection and supervision of a group environment to facilitate their becoming functional members of society.
2. New family homes owned and operated by public or private agencies must be dispersed throughout residential districts and may not be located within contiguous city block areas pursuant to Iowa Code section 414.22.

D. Home and Community-Based Services Waiver Recipient Residence

A single-household dwelling owned or rented by a recipient of a home and community-based services waiver approved by the federal government and implemented under the medical assistance program as defined in Iowa Code chapter 249A; or a multi-household dwelling which does not hold itself out to the public as a community-based residential

provider otherwise regulated by law, including but not limited to a residential care facility, and which provides household units to no more than four recipients of services under a home and community-based services waiver approved by the federal government and implemented under the medical assistance program, as defined in Iowa Code chapter 249A, at any one time.

E. Shelter, Temporary

1. A temporary shelter is a group living use that provides overnight or temporary living accommodations for individuals who do not have access to traditional or permanent housing or who require temporary living accommodations during periods of emergency or crisis. Temporary shelters may provide other services for residents, including counseling.
2. Temporary shelters are subject to the following supplemental use regulations:
 - a. Temporary shelters must contain at least 70 square feet of usable floor space per occupant. Bathrooms and areas having less than seven feet of ceiling height may not be counted.
 - b. Each such facility must contain at least one lavatory and one toilet per 10 residents or fraction thereof and one tub or shower per 15 residents or fraction thereof. At least one bathroom with tub or shower, toilet and lavatory must be located on each floor that is occupied by resident bedrooms.
 - c. New temporary shelters may not be located within 1,320 feet of an existing family home, home- and community-based services waiver recipient residence, correctional placement residence, or temporary shelter, except when such facilities are separated from by a freeway or river.

F. Group Living Not Otherwise Categorized

Any group living facility other than an assisted living facility, correctional placement residence, family home, home- and community-based services waiver recipient residence or temporary shelter. Group living uses not otherwise categorized are subject the following supplemental use regulations:

1. The proposed location must provide residents with adequate access to public transportation.
2. A permit for such use is subject to reconsideration by the board of adjustment if at any time the community development

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Public, Civic and Institutional Use Category

director determines that the facility has become detrimental to the neighborhood.

3. Each bedroom must have 80 square feet of usable floor space per bed and usable floor space of at least eight feet in any major dimension. For purposes of calculating usable floor space, any parts of a room having less than seven feet of ceiling height may not be counted. Rooms in which beds are located may not be used for purposes other than bedrooms.
4. Each such facility must contain at least one lavatory and one toilet per 10 residents or fraction thereof and one tub or shower per 15 residents or fraction thereof. At least one bathroom with tub, shower, toilet and lavatory must be located on each floor that is occupied by resident bedrooms.
5. Each such facility must contain areas for dining and recreational purposes. When space is used for multi-purpose dining and recreational purposes, the area must include at least 30 square feet of floor area per resident bed. When space is provided exclusively for dining, the area must include at least 15 square feet of floor area per resident bed. When space is provided to be used exclusively for recreational purposes, the area shall total at least 15 square feet of floor area per resident bed and at least 50% of the required area must be in one room.

134-3.4 Public, Civic and Institutional Use Category

This use category includes public, quasi-public and private uses that provide unique services that are of benefit to the public at-large. The public, civic and institutional subcategories are as follows.

3.4.1 AIRPORT

Facilities from which FAA-certified aircraft take off, land and operate, including customary accessory uses and structures.

3.4.2 ASSEMBLY

A facility that has organized services, meetings, or programs to benefit, educate, entertain, or promote discourse amongst the residents of the community.

- A. Place of Worship.** Buildings used for conducting organized religious services. Examples include synagogues, temples, mosques and churches.

- B. Place of Assembly.** Buildings used for conducting organized services, meetings, or programs. Examples include community centers and recreation centers.

3.4.3 CEMETERY

Any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains. The cemetery use subcategory includes cemeteries and scattering grounds owned by the city and operated in accordance with chapter 34 of this code as well as cemeteries and scattering grounds not owned by the city. Cemeteries that are not owned by the city require conditional use approval and are subject to the supplemental use regulations of paragraph B of this subsection.

- A. Exclusions.** The following are not included in the cemetery use subcategory:

1. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
2. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
3. A cemetery where there were 12 or fewer burials in the preceding 50 years, also referred to as a "pioneer cemetery".

- B. Supplemental Use Regulations.** Cemeteries that are not owned by the city are subject to the following supplemental use regulations:

1. Surveys and records must be maintained of each cemetery, including plots of every interment and scattering area and the location of benches and columbariums. Records must indicate the GPS coordinates, name, death, burial and birth dates, last address, and name and address of contact person.
2. A monument or marker of the name of all persons whose remains are scattered must be placed at the scattering site.
3. Written authorization must be obtained and kept for each person whose remains are scattered, including cremation benches and columbariums, to allow removal and relocation of the scattered remains.

4. The property must be maintained free of tall weeds and debris.
5. Monuments and other markers or structures, fences, walkways, paths, and roadways must be maintained in good and safe condition and appearance.
6. The perimeter of the cemetery must be fenced.
7. A portion of every lot sale, burial service fee, or scattering fee must be kept in a fund for maintenance of the cemetery grounds.
8. The scattering of remains is allowed only in cemeteries operating in compliance with the Iowa Cemetery Act. Cremated remains may only be scattered in a designated area with dimensions of no more than 20 feet by 20 feet.

3.4.4 COLLEGE OR UNIVERSITY

Academic institutions of higher learning that are accredited or recognized by the state and offer courses of general or specialized study.

3.4.5 FRATERNAL ORGANIZATION

The use of a building or lot by a not-for-profit, social or business organization that restricts access to its facility to bona fide, annual dues-paying members and their occasional guests and where the primary activity is a service not carried on as a business enterprise.

3.4.6 GOVERNMENT ADMINISTRATION

Uses in an enclosed building, customarily performed by local, state, or federal governmental offices and agencies, that focus on providing administrative, executive, judicial, legislative, management, professional or medical services.

3.4.7 HOSPITAL

Uses providing medical or surgical care to patients and offering inpatient, or overnight care.

3.4.8 LIBRARY OR CULTURAL EXHIBIT

Museum-like preservation and exhibition of objects in one or more of the arts and sciences, gallery exhibition of works of art or library collections of books, manuscripts and similar materials operated by a public or quasi-public agency other than the city for study and reading by the general public.

3.4.9 PUBLIC RECREATION AREAS

Recreational, social or multi-purpose uses associated with public parks and open spaces, including playgrounds, play fields, play courts and other non-commercial recreational facilities. This may include uses identified by section 134-3.5.18 of this article subject to

approval by the city.

3.4.10 POSTAL SERVICE

Post offices operated by the U.S. Postal Service. Mail sorting and distribution facilities are classified as trucking and transportation terminals.

3.4.11 SAFETY SERVICE

Establishments that provide fire, police or life protection, together with the incidental storage and maintenance of necessary vehicles. Typical uses include fire stations and police stations.

3.4.12 SCHOOL

Public and private schools at the primary, elementary, middle school or high school level that provide basic, compulsory education.

3.4.13 UTILITIES AND PUBLIC SERVICE FACILITIES

- A. **Minor.** Infrastructure services that need to be located in or close to the area where the service is provided. Minor utilities and public service facilities do not regularly have employees at the site and typically have few if any impacts on surrounding areas. Typical uses include: underground electric distribution substations; electric transformers; water conveyance systems; stormwater facilities and conveyance systems; telephone switching equipment and emergency communication warning/broadcast facilities.
- B. **Major.** Infrastructure services that typically have substantial visual or operational impacts on nearby areas. Typical uses include: above-ground electric distribution substations; wastewater management facilities and filtration systems; solar farms; wind farms.

134-3.5 Commercial Use Category

The commercial use category includes uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public. The commercial use subcategories are as follows.

3.5.1 ADULT ENTERTAINMENT

An adult bookstore, adult motel, adult motion picture arcade, adult motion picture theater or sexual encounter center.

- A. **Adult Bookstore.** An establishment having as a significant portion of its stock in trade books, films, magazines and other periodicals which are distinguished or characterized by an emphasis on matter depicting or describing sex acts or specified anatomical areas.

Commercial Use Category

B. Adult Motel. A motel wherein material is presented which is distinguished or characterized by an emphasis on depicting or describing sex acts or specified anatomical areas.

C. Adult Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing sex acts or specified anatomical areas.

D. Adult Motion Picture Theater. An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting or describing sex acts or specified anatomical areas for observation by patrons therein.

E. Sexual Encounter Center. A business, agency or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in sex acts or exposing specified anatomical areas.

F. Supplemental Use Regulations. Adult entertainment uses are subject to the following supplemental use regulations.

1. Adult entertainment uses may not be established within 750 feet of:
 - a. Another adult entertainment use;
 - b. School, religious assembly, public recreation areas, public plazas or day care use;
 - c. A residential use.
2. For purposes of measuring compliance with these separation distance requirements, measurements must be taken on a direct line following the shortest distance from the property line of the proposed use to property line of lot occupied by the use, district or area from which separation is required.
3. The establishment of an adult entertainment use includes the opening of a new such use, the relocation of such use, the expansion of such a use or the conversion of an existing use to an adult entertainment use.
4. All building entries, windows, and other openings must be constructed, located, covered, or visually

screened in to prevent views into the interior of such building from any sidewalk, walkway, street or other public or semipublic area.

3.5.2 ANIMAL SERVICE

Uses that provide goods and services for care of animals, including the following specific use types, subject to the requirement that any outdoor boarding or outdoor exercise runways must be located at least 200 feet from any N'or NX1 district:

A. Breeding and Boarding. Breeding of four or more pets or companion animals six months in age or older and/or non-medical care provided for household pets in a location other than their primary residence. Typical examples include dog breeding kennels, kennel services, pet resorts/hotels, pet training centers, and pet day care centers.

B. Grooming. Grooming of dogs, cats and similar small household pets, including dog bathing and clipping salons and pet grooming shops.

C. Stable. Land or structure in which horses are kept, whether for personal enjoyment or for compensation.

D. Veterinary. Animal hospitals and veterinary clinics.

3.5.3 ASSEMBLY AND ENTERTAINMENT

Buildings and other facilities that accommodate public assembly for spectator-oriented sports, amusement, or entertainment events. Typical uses include event centers, fairgrounds, theaters, and cinemas.

A. Small. Assembly and entertainment, uses including event centers, with a seating or occupant capacity of less than 2,000 persons.

B. Large. Assembly and entertainment uses, including event centers, with a seating or occupant capacity between 2,000 and 10,000 persons.

C. Event Center. Civic or community auditoriums, sports stadiums and arenas, convention facilities and multi-purpose venues with a seating or occupant capacity of more than 10,000 persons.

3.5.4 BROADCAST OR RECORDING STUDIO

Uses that provide for audio or video production, recording or radio, television or internet broadcasting.

3.5.5 BUSINESS OR TRADE SCHOOL

Uses in an enclosed building that focus on teaching the skills needed to perform a particular job. Examples include schools of cosmetology, modeling academies, computer training facilities, vocational schools, administrative business training facilities and similar uses. Truck driving schools and other training facilities

that involve outdoor work or training activities are classified as industrial services.

3.5.6 COMMERCIAL SERVICE

Uses that provide low-impact repair, maintenance and improvement services to individual consumers and small businesses.

A. Consumer Maintenance and Repair Service.

Uses that provide maintenance, cleaning and repair services for consumer goods on a site other than that of the customer, including uses such as customers bring goods to the site of the repair/maintenance business. Typical uses include laundry and dry cleaning pick-up shops, tailors, taxidermists, dressmakers, shoe repair, small engine repair, picture framing shops, copy shops, locksmiths, vacuum repair shops, electronics repair shops and similar establishments, but not including vehicle maintenance and repair. Business that offer repair and maintenance service for large equipment or technicians who visit customers' homes or places of business are classified as an "Industrial service."

B. Personal Service. Uses that provide personal support and improvement services. Typical uses include barbers, hair and nail salons, tanning salons, travel agencies, and day spas. Also includes uses involved in providing tattoos, piercing and similar forms of body art.

C. Studio or Instructional Service. Uses that focus on providing individual or small group instruction or training in fine arts, music, dance, drama, fitness, language or similar activities. Also includes dance studios, ballet academies, yoga studios, martial arts instruction, tutoring, photography studios and other studios for artists that do not involve the use of power tools or power machinery.

3.5.7 DAY CARE

Uses providing care and supervision for more than eight children away from their primary residence for less than 24 hours per day.

3.5.8 DAY SERVICES, ADULT

An organized program providing a variety of health-related care, social services, and other related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis certified by the State of Iowa.

3.5.9 EATING AND DRINKING PLACES

An establishment that serves food or beverages for on- or off-premise consumption as its principal business.

A. Restaurant. An establishment that serves food or beverages for on- or off-premise consumption as its principal business. Typical examples of restaurant uses include principal use restaurants, cafés, cafeterias, ice cream or yogurt shops, donut shops and coffee shops. Any restaurant engaged in the sale of alcoholic liquor, wine or beer is subject to the regulations of section 134-3.8.1 of this article and Table 134-3.1-2 of this article.

B. Bar. Uses that cater primarily to adults, 21 years of age and older and that sell and serve alcoholic liquor, wine or beer for on-premise consumption as their principal business. Typical uses include bars, taverns, brewpubs, tasting rooms and nightclubs. All such uses are subject to the regulations of section 134-3.8.1 of this article and Table 134-3.1-2 of this article.

3.5.10 FINANCIAL SERVICE

Uses related to the exchange, lending, borrowing and safe-keeping of money. Automatic teller machines, kiosks and similar facilities that do not have on-site employees or amplified sound are not classified as financial service uses if they meet the criteria for classification as an accessory use pursuant to section 134-3.9 of this article. Typical examples of financial service use types are banks, credit unions, and the following types of personal credit establishments:

A. Bail Bonds. A use that provides surety and pledged money or property as bail for the appearance of persons accused in court.

B. Delayed Deposit Service. A use that for a fee does either of the following:

1. Accepts a check dated after the date it was written.
2. Accepts a check dated on the date it was written and holds the check for a period of time before deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, whether express or implied.

C. Pawnbroker. A person or a use that makes loans or advancements upon pawn, pledge or deposit of personal property or that receives actual possession of personal property as security for loans, with or without a mortgage or bill of sale thereon, or that by advertisement, sign or otherwise holds himself or herself out as a pawnbroker.

D. Supplemental Use Regulations. Personal credit establishments are subject to the following supplemental use regulations.

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1. Personal credit establishments may not be established within 1,320 feet of another personal credit use;
2. Personal credit establishments may not be established within 250 feet of an N district, NX district, or residential use;
3. For purposes of measuring compliance with these separation distance requirements, measurements must be taken on a direct line following the shortest distance from the property line of the proposed use to property line of lot occupied by the use, district or area from which separation is required.
4. The establishment of a personal credit establishment includes the opening of a new such use, the relocation of such use, the expansion of such a use or the conversion of an existing use to a personal credit use.
5. Drive-in and drive-through service facilities are prohibited for personal credit establishments.

3.5.11 FUNERAL AND MORTUARY SERVICE

Uses that provide services related to the death of a human or domestic, household pet, including funeral homes and mortuaries.

3.5.12 LODGING

Uses that provide temporary lodging for less than 30 days where rents are charged by the day or by week. Lodging uses sometimes provide food or entertainment, primarily to registered guests. Examples of specific lodging use types include:

- A. Bed and Breakfast.** An owner-occupied household, other than a multi-household residential use, restaurant, motel, short-term rental or shelter for the homeless, where lodging and meals are provided for compensation to three or more persons in a house building type. A bed and breakfast may not be occupied by more persons than as allowed per bedroom or sleeping area in the occupancy limitations set forth in the International Property Maintenance Code. The owner-occupant shall be present and residing in the bed and breakfast for the duration of any rental of all or a part of the bed and breakfast.
- B. Hotel or Motel.** A lodging establishment other than a bed and breakfast and that may provide ancillary facilities and services, customary in a full-service hotel, as further regulated by the Iowa Code.
- C. Short-Term Commercial Rental.** The use of a household unit for commercial lodging; also referred to in this chapter as short-term rental. A household unit, or part of a household unit, other

than a restaurant, motel, temporary shelter, or bed and breakfast, where lodging is provided for compensation for one or more persons for periods of less than 30 consecutive days. All short-term rentals are subject to the following supplemental regulations, together with such additional special conditions as may be reasonably required by the board of adjustment:

1. The owner or authorized management agent of a short-term rental and all short-term rental guests may not use, or allow another to use, a short-term rental for any assembly use.
2. The owner of a short-term rental shall provide the community development director with the name, physical address, email address, tax identification number, and telephone number of the owner and any individual over the age of 18 who shall be designated as the "authorized management agent" responsible for maintenance of the property and for responding to communications during the duration of a short-term rental. If there is a change related to an authorized management agent, the owner must provide updated or new information to the community development director in writing within three business days following such change.
3. Short-term rentals shall include one or more adults 21 years of age or older in the renting party, and shall be limited to a single party of individuals.
4. The owner or authorized management agent of a short-term rental and all short-term rental guest may not produce sound in excess of the city's noise control ordinance, including the use of sound equipment.
5. The owner or authorized management agent of a short-term rental shall provide a packet for all short-term rental guests with the following information, and provide an updated copy that remains in the unit:
 - a. Emergency contact information for the owner and authorized management agent.
 - b. Emergency and non-emergency numbers for City of Des Moines police and fire.
 - c. Trash pickup schedule
 - d. Any parking restrictions for on-street and off-street parking, including the city's snow ordinance
 - e. Occupancy limits for the household unit or structure.

6. The owner or authorized management agent of a short-term rental shall annually provide owners and occupants of immediately adjoining properties, and of adjacent properties separated from the short-term rental unit by public right-of-way, with emergency contact information for the owner and authorized management agent.
7. Each owner and authorized management agent of a short-term rental shall have a duty to comply with all applicable federal, state and local laws and regulations, including but not limited to hotel/motel licensing, and collection and payment of taxes such as hotel accommodation taxes and property taxes, and shall be required to show proof of payment of such taxes within 15 days of request by the community development director.
8. The owner and authorized management agent of a short-term rental shall maintain current guest registration records which contain the following information about each guest:
 - a. Name;
 - b. Address;
 - c. Signature;
 - d. Copy of driver's license; and
 - e. Dates of accommodation.
9. A short-term rental may not be occupied by more persons than as allowed per bedroom or sleeping area in the occupancy limitations set forth in the International Property Maintenance Code.
10. A maximum of one short-term rental may be allowed per single-household detached structure. The short-term rental shall be owner-occupied or associated with an owner-occupied principal residential structure, or tenant-occupied or associated with a tenant-occupied principal residential structure with the signed written consent of the property owner. The owner-occupant or tenant-occupant, as applicable, shall reside in the single-household detached structure containing or associated with the short-term rental as his or her primary residence for no fewer than 245 days annually, with each annual period commencing on the anniversary of the date of filing of the board of adjustment decision and order approving the conditional use.
11. A maximum of one short-term rental may be allowed per two-household attached structure or per condominium within a structure. The short-term rental shall be owner-occupied or associated with an owner-occupied principal residential structure, or tenant-occupied or associated with a tenant-occupied principal residential structure with the signed written consent of the property owner. The owner-occupant or tenant-occupant, as applicable, shall reside in the two-household attached structure or condominium within a structure containing or associated with the short-term rental as his or her primary residence for no fewer than 245 days annually, with each annual period commencing on the anniversary of the date of filing of the board of adjustment decision and order approving the conditional use.
12. A maximum of 10% of the total number of household units located in a multi-household attached structure consisting of individually owned condominiums may be allowed per such multi-household attached structure. Said percentage shall be rounded down to the lowest whole number including zero. Each short-term rental shall be owner-occupied, or tenant-occupied with the signed written consent of the condominium owner. The owner-occupant or tenant-occupant, as applicable, shall reside in the condominium containing the short-term rental as his or her primary residence for no fewer than 245 days annually, with each annual period commencing on the anniversary of the date of filing of the board of adjustment decision and order approving the conditional use.
13. A maximum of 10% of the total number of household units located in a multi-household attached structure not consisting of individually owned condominiums may be allowed per such multi-household attached structure. Said percentage shall be rounded down to the lowest whole number including zero. Each short-term rental shall be applied for and operated by the owner of the multi-household attached structure, or the owner's authorized management agent.
14. Short-term renters shall be provided, at a minimum, the exclusive use of a bedroom and shared use of a full bathroom for the duration of any such rental.
15. Renting of each approved short-term rental shall be limited to no more than 120 days' cumulative annual rentals, with each annual rental period commencing on the anniversary of the date of filing of the board of adjustment decision and order approving the conditional use. The 120-day cumulative annual rental limit is applicable across any and all hosting platforms or other

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means of advertising the short-term rental, rather than per hosting platform or advertising method. Notwithstanding the foregoing, short-term rentals located within owner-occupied single-household detached structures, and short-term rentals located on the same lot as and associated with an owner-occupied principal residential structure, are not subject to the 120-day cumulative annual rental limitation provided that the owner-occupant is present for the duration of any short-term rental(s) occurring after said 120-day limitation has been reached within each annual rental period.

16. The owner or authorized management agent of a short-term rental shall post a clearly printed sign inside the short-term rental unit on the inside of the front door that provides information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits, and pull fire alarms.
17. The owner of a short-term rental shall maintain liability insurance appropriate to cover the short-term rental use in the aggregate of not less than \$500,000 (U.S. dollars) or shall conduct each short-term rental transaction through a hosting platform that provides equal or greater coverage. Such coverage shall defend and indemnify the owner, as named additional insured, and any tenants in the building for their bodily injury and property damage arising from the short-term rental use.
18. In the event that a short-term rental unit or the property on which it is located is subject to any unresolved building, electrical, plumbing, mechanical, fire, health, housing, police, or zoning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices, the short-term rental use shall be prohibited until such enforcement is complete and all violations are corrected to the approval of the community development director.
19. Any form of advertising of a short-term rental, including but not limited to listing on a hosting platform, is prohibited until a conditional use is approved by the board of adjustment. Any form of advertising of a short-term rental, including but not limited to listing on a hosting platform, is further prohibited at any time that the short-term rental use is not in full compliance with one or more of the general requirements for short-term rentals stated herein or with one

or more conditions established in the board of adjustment conditional use approval.

20. The owner or authorized management agent of a short-term rental shall maintain records demonstrating compliance with this section. Records shall be made available to the community development director upon request.

3.5.13 OFFICE

Uses in an enclosed building, customarily performed in an office, that focus on providing executive, management, administrative, professional or medical services. Examples of specific use types include:

- A. **Business or Professional.** Office uses for companies and non-governmental organizations. Examples include corporate office, law offices, architectural firms, insurance companies and other executive, management or administrative offices for businesses and corporations. Also includes uses engaged in scientific research and testing services leading to the development of new products and processes that do not involve the mass production, distribution or sale of such products.
- B. **Medical.** Office or clinic uses related to diagnosis and treatment of human patients' illnesses, injuries and physical maladies that can be performed in an office setting with no overnight care. Typical uses include offices of physicians, dentists, psychiatrists, psychologists and chiropractors. Surgical, rehabilitation and other medical centers that do not involve overnight patient stays are included in this use subcategory, as are medical and dental laboratories, unless otherwise expressly indicated.

3.5.14 PARKING, NON-ACCESSORY.

- A. A lot that does not contain a permitted building of more than 1,000 square feet, is not used for open space, and is almost exclusively used for the parking of vehicles, whether a surface lot or a parking structure.
- B. When a conditional use permit is required, a non-accessory parking facility shall meet the following requirements:
 1. Two or more principal parking facilities shall not be located directly abutting one another.
 2. Refer to section [135-2.17 of this code](#) for principal use parking structure building type.

3.5.15 RETAIL SALES

Uses involving the sale, lease or rental of new or used goods to the ultimate consumer. Examples of specific retail use types include retail sales of convenience goods, consumer shopping goods and building supplies

and equipment.

- A. Limited Retail Sales.** Retail sales establishments occupying no more than 12,000 square feet of floor area.
- B. General Retail Sales.** Retail sales establishments occupying more than 12,000 square feet of floor area but no more than 40,000 square feet of floor area.
- C. Large-Format Retail Sales.** Retail sales establishments occupying more than 40,000 square feet of floor area.

3.5.16 SELF-SERVICE STORAGE

An enclosed use that provides separate, small-scale, self-service storage facilities leased or rented to individuals or small businesses, including, if any, caretaker's or supervisor's quarters as an accessory use. Facilities are designed and used to accommodate interior access to storage lockers or drive-up access from passenger vehicles. Self-service storage does not allow storage of junk, explosive or flammable materials, and other noxious or dangerous materials.

A. Supplemental Use Regulations.

Self-service storage uses are subject to the following in MX2 and MX3 districts:

1. The self-storage use shall be permitted only within the interior of converted pre-existing buildings or the interior of building types allowed in the applicable zoning district, in accordance with chapter 135 of this code.
2. No external storage or additional buildings shall be permitted as part of the self-storage use.
3. The landscape regulations of chapter 135 of this code shall be required of any self-storage use of property, whether associated with a pre-existing building or an allowed building type.

3.5.17 SIGN, GENERAL ADVERTISING

A large outdoor advertising structure, with a minimum sign face of 300 square feet in area and a maximum sign face of 672 square feet in area, located along major commercial corridors identified in article 5 of this chapter to provide information to the general public in exchange for compensation. General advertising signs are subject to sections [134-5.7](#), [134-5.8](#), and [134-7.3 of this chapter](#).

3.5.18 SPORTS AND RECREATION, PRIVATE/PARTICIPANT

A commercial facility for provision of sports or recreation primarily by and for participants. Spectators are incidental. Examples include bowling alleys,

health clubs, skating rinks, bingo halls, casinos, billiard parlors, driving ranges and miniature golf courses, archery ranges, batting cages, go-cart tracks, private golf courses and recreational fields, and private open spaces.

- A. Indoor.** Participant sports and recreation uses conducted entirely within buildings.
- B. Outdoor.** Participant sports and recreation uses conducted wholly or partially outside of buildings.

3.5.19 VEHICLE SALES AND SERVICE

A. Fuel Station

1. A use engaged in retail sales of vehicle fuels for personal vehicles, other than fleet fueling facilities and truck stops, which are regulated as industrial service uses and which may include retail sales of convenience items.
2. Fuel stations are subject to the applicable building type regulations in [article 2 of chapter 135 of this code](#) and accessory structure regulations in section [135-2.22.3 of this code](#).

B. Vehicle Sales. Uses primarily engaged in the sales of personal, consumer-oriented motor vehicles, such as automobiles, pick-up trucks, motorcycles and personal watercraft. The sale of large trucks, construction equipment, agricultural equipment, aircraft or similar large vehicles are regulated as trucking and transportation terminals pursuant to section [134-3.6.3 of this article](#). Vehicle sales are also subject to sections [134-6.3.12 of this chapter](#) and [135-2.1.4.D of this code](#).

C. Vehicle Rentals. Uses primarily engaged in the rental of personal, consumer-oriented motor vehicles, such as automobiles, pick-up trucks, motorcycles and personal watercraft. The rental of large trucks, construction equipment, agricultural equipment, aircraft or similar large vehicles are regulated as trucking and transportation terminals pursuant to section [134-3.6.3 of this article](#). Vehicle rentals are also subject to sections [134-6.3.12 of this chapter](#) and [135-2.1.4.D of this code](#).

D. Vehicle Maintenance and Repair, Minor. Uses that repair, install or maintain the mechanical components of automobiles, trucks, vans, trailers or motorcycles or that wash, clean or otherwise protect the exterior or interior surfaces of such vehicles. Minor vehicle maintenance and repair uses are subject to the following supplemental use regulations:

1. No more than three vehicles per bay may be stored outdoors while awaiting repair or pick-up.

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2. No long-term outdoor storage of vehicles beyond 72 hours is allowed.
3. Vehicles awaiting repair or pick-up may not occupy required parking spaces.
4. All vehicles must have current license tags.
5. Outdoor storage of junk, debris, tires or vehicle parts is prohibited.
6. All repairs must occur within a completely enclosed building.

E. Vehicle Maintenance and Repair, Major. Uses that primarily conduct motor vehicle body work and repairs or that apply paint to the exterior or interior surfaces of motor vehicles by spraying, dipping, flow-coating or other similar means. Major vehicle maintenance and repair uses are subject to the following supplemental use regulations:

1. No more than three vehicles per bay may be stored outdoors while awaiting repair or pick-up.
2. No long-term outdoor storage of vehicles beyond 72 hours is allowed.
3. Vehicles awaiting repair or pick-up may not occupy required parking spaces.
4. Vehicles awaiting repair or pick-up must be screened from view of rights-of-way.
5. All vehicles must have current license tags.
6. Outdoor storage of junk, debris, tires or vehicle parts is prohibited.
7. All repairs must occur within a completely enclosed building.

building with no outdoor operations, storage or regular commercial truck parking or loading, but which must include retail sales of goods produced on-site with a sales area of at least 625 square feet, with direct access from the main building entrance, and may include residential use.

B. Limited. Uses are artisan without retail sales or residential use, and uses that process, fabricate, assemble, treat, or package finished parts or products without the use of explosive or petroleum materials in a completely enclosed building. This subcategory does not include the assembly of large equipment and machinery and has very limited external impacts in terms of noise, vibration, odor, hours of operation, and traffic. Common examples include apparel manufacturing, bakery products manufacturing, bottling plants, cabinet making, ice manufacturing, microbreweries, micro distilleries, musical instrument manufacturing, newspaper printing and binderies.

C. General. Uses that process, fabricate, assemble, or treat materials for the production of large equipment and machines as well as fabrication and production uses that because of their scale or method of operation may produce odors, dust, noise, vibration, truck traffic or other external impacts that are detectable beyond the property lines of the subject property but not a nuisance level. Common examples include dairy products manufacturing, mattress manufacturing and assembly, crematoriums, underground storage of flammable and combustible liquids in excess of 30,000 gallons, and sawmill and planing mill, including manufacture of wood products not involving chemical treatment.

D. Intensive. Uses that regularly use hazardous chemicals or procedures or produce hazardous byproducts, including the following: manufacturing of acetylene, cement, lime, gypsum or plaster-of-paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, poisons, explosives, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins, radioactive materials, and above ground storage of flammable and combustible liquids in excess of 1,000 gallons. This subcategory also includes petrochemical tank farms, gasification plants, foundries, chrome plating, smelting, electroplating, fiberglass manufacturing, animal slaughtering, oil refining, asphalt and concrete plants, flour mills, paper products manufacturing, and tanneries. Intensive industrial uses have high potential for external impacts on the surrounding area in terms of noise, vibration, odor, hours of operation, and traffic.

134-3.6 Industrial Use Category

The industrial use category includes uses that produce goods from extracted materials or from recyclable or previously prepared materials, including the design, storage and handling of these products and the materials from which they are produced. It also includes uses that store or distribute materials or goods in large quantities and uses involved in basic industrial processes.

3.6.1 FABRICATION AND PRODUCTION

Uses primarily involved in the manufacturing, processing, fabrication, packaging, or assembly of goods made for the wholesale market, for transfer to other plants, or for firms or consumers.

A. Artisan. Uses involved in the creation of art works or custom goods by hand manufacturing involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed

E. Supplemental Use Regulations.

Fabrication and production uses are subject to the following:

1. No part of the use may be a residential use, except for artisan uses.
2. No odors, gases, noise, vibration, pollution of air, water or soil, or lighting shall be emitted onto any adjoining property so as to create a nuisance.
3. The owner or occupant must provide the community development director with an acceptable written statement describing the use and the nature of any odors, gases, noise, vibration, and other environmental impacts that may be generated by such use; and certifying that the use upon the property will be operated in a manner that does not permit any odors, gases, noise, vibration, pollution of air, water or soil, or lighting to be emitted onto any adjoining property so as to create a nuisance.
4. The use shall be operated in strict conformance with the written statement provided to the community development director.

3.6.2 INDUSTRIAL SERVICE

Uses engaged in the maintenance, repair or servicing of industrial, business or consumer machinery and materials.

A. Light.

Uses involved in repair and maintenance, but not involving outdoor storage areas. Examples include janitorial, carpet cleaning, extermination, plumbing, electrical, window cleaning and similar building maintenance services.

B. Intensive.

Light uses involving outdoor storage areas and uses involved in repair and maintenance directly to business consumers or involving large equipment. Examples include welding shops; machine shops; publishing and lithography; redemption centers; laundry, dry-cleaning, and carpet cleaning plants; photofinishing laboratories and maintenance and repair services that are not otherwise classified.

C. Supplemental Use Regulations.

Industrial service uses are subject to the following:

1. No part of the use may be a residential use.
2. No odors, gases, noise, vibration, pollution of air, water or soil, or lighting shall be emitted onto any adjoining property so as to create a nuisance.

3. For intensive uses, the owner or occupant must provide the community development director with an acceptable written statement describing the use and the nature of any odors, gases, noise, vibration, and other environmental impacts that may be generated by such use; and certifying that the use upon the property will be operated in a manner that does not permit any odors, gases, noise, vibration, pollution of air, water or soil, or lighting to be emitted onto any adjoining property so as to create a nuisance.
4. For intensive uses, the use shall be operated in strict conformance with the written statement provided to the community development director.
5. For intensive uses, all outdoor storage areas shall be designed to allow no part of any stored material, vehicles or equipment to encroach into the required setbacks.
6. Outdoor storage of inoperable or unsafe vehicles in quantities constituting a junk or salvage yard is prohibited.

3.6.3 STORAGE, DISTRIBUTION AND WHOLESALING

Principal uses involved in the storage or movement of goods for themselves or other firms or the sale, lease, or rental of goods primarily intended for industrial, institutional, or commercial businesses.

A. Equipment and Materials Storage, Outdoor.

Uses, excluding junk and salvage yards, that constitute outdoor storage of equipment, products or materials, whether or not stored in containers. All such uses shall comply with the requirements of subsections [A](#), [C](#), [D](#), [E](#), and [F](#) of section [134-3.9.6 of this article](#).

B. Trucking and Transportation Terminals. Uses engaged in the sales, rental, dispatching, servicing and repair, or long-term or short-term storage of large trucks, buses, construction equipment, agricultural equipment and similar large vehicles, including parcel service delivery vehicles, taxis and limousines. Also includes uses engaged in the moving of household or office furniture, appliances and equipment from one location to another, including the temporary on-site storage of those items.

C. Warehouse. Uses conducted within a completely enclosed building that are engaged in long-term and short-term storage of goods and that do not meet the definition of "self-service storage" use or a "trucking and transportation terminal."

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D. Wholesale Sales and Distribution. Uses engaged in the wholesale sales, bulk storage and distribution of goods. Such uses may also include incidental retail sales and wholesale showrooms. Expressly includes the following uses: bottled gas and fuel oil sales, flea markets, ice distribution centers, monument sales, portable storage building sales, vending machine sales, auctioneers, and frozen food lockers.

E. Supplemental Use Regulations.

Storage, distribution, and wholesaling uses are subject to the following:

1. Outdoor storage of inoperable or unsafe vehicles in quantities constituting a junk or salvage yard is prohibited.
2. No part of the use may be a residential use.
3. No odors, gases, noise, vibration, pollution of air, water or soil, or lighting is emitted onto any adjoining property so as to create a nuisance.
4. The owner or occupant has provided the community development department with a written statement upon a form acceptable to the community development director which describing the use to occur upon the property and the nature of any odors, gases, noise, vibration, and other environmental impacts that may be generated by such use, and which certifying that the use upon the property will be operated in a manner that does not permit any odors, gases, noise, vibration, pollution of air, water or soil, or lighting to be emitted onto any adjoining property so as to create a nuisance.
5. The use shall be operated in strict conformance with the statement provided pursuant to paragraph 4, above.

3.6.4 JUNK OR SALVAGE YARD

A. Description. A building or open area where waste, scrap, used or second-hand materials are bought, sold, exchanged, stored, baled, packed, disassembled, crushed, processed, recycled, or handled for reclamation, disposal or other similar purposes, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles encompassing either:

1. An area of 200 square feet or more; or
2. Two or more inoperable motor vehicles, or used parts and materials thereof, which taken together equal the bulk of two or more motor vehicles.

B. Supplemental Use Regulations. Junk or salvage yard uses are subject to the following:

1. All driveways, parking lots and areas used for temporary storage of vehicles must be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces approved by the city engineer so as to provide a durable and dustless surface, and must be graded to properly drain all surface water accumulation within the area.
2. All areas outside a completely enclosed building used for the storage of inoperable or unsafe vehicles, junk or salvage materials must be enclosed on all sides by a solid opaque fence and gates at least eight feet in height and of uniform design and color, so as to effectively screen such areas from public view. If such area abuts an area upon the adjoining property that is also used for the storage of inoperable or unsafe vehicles, junk or salvage materials, no fence or setback is required along the common property line while such adjoining use continues. All fences shall be maintained in good repair.
3. Junk and salvage materials may not be stacked higher than the perimeter fence within 75 feet of the fence and may not be stacked higher than 25 feet anywhere on the site.
4. The dismantling or repair of vehicles shall occur only upon a impermeable surface with adequate provision for the collection and disposal of fluids and wastes.
5. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material, which is screened from the adjoining public right-of-way.
6. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.

3.6.5 MINING OR MINERAL PROCESSING

The mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil or gas.

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134-3.7 Agricultural Use Category

3.7.1 COMMUNITY AND URBAN GARDEN

Areas that are managed and maintained by an individual or a group of individuals to grow and harvest food crops or non-food crops (e.g., flowers). A community garden area may be divided into separate garden plots for cultivation by one or more individuals or may be farmed collectively by members of the group. Community gardens are subject to the following supplemental use regulations:

- A. Unless permitted in the subject zoning district or approved as a conditional use, on-site sales of community garden products or other items is prohibited.

- B. All equipment must be stored in a completely enclosed building.
- C. The community garden site must be designed and maintained to prevent any chemical pesticide, fertilizer or other garden waste from draining on to adjacent properties.
- D. On-site trash, recyclable and compost containers must be located and maintained as far as practicable from residential household units located on other lots.
- E. A sign must be posted on the subject property identifying the name and phone number of the property owner or the owner's agent. The sign must be at least four and no more than six square feet in area and be posted so that it is legible from the public right-of-way.
- F. The property must be maintained free of tall weeds and debris. Dead garden plants must be regularly removed.
- G. The perimeter of all community and urban gardens must be fenced.
- H. Gardens that are accessory to a household living use are exempt from this section.
- I. Any animal husbandry shall be in compliance with chapter 18 of this code.

3.7.2 CROP PRODUCTION

An area managed and maintained by an individual, group or business entity to grow crops.

3.7.3 NURSERY OR TRUCK FARM

The propagation and growth of trees or food or non-food crops for wholesale or retail sales and distribution. Does not include on-site retail sales unless such sales are otherwise allowed in the subject zoning district. Typical uses include plant nurseries, the growing of vegetables and non-food crops primarily for local wholesale and retail sales.

134-3.8 Other Use Category

This category includes uses that do not fit the other use categories.

3.8.1 LIQUOR, WINE AND BEER SALES

A. Description.

The retail sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions indicated in Table 134-3.1-2 of this article.

B. Conditional Use Approval Criteria

Conditional use approval is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in indicated in Table 134-3.1-2 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 134-3.1-2 of this article.
2. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
4. The business will not unduly increase congestion on the streets in the adjoining residential area.
5. The operation of the business will not constitute a nuisance.

C. General Conditions. Any conditional use approval granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer is subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:

1. Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
2. The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound is prohibited except when used in compliance with a type E sound permit.
3. Any such business must comply with the following requirements:

- a. Every limited retail sales establishment, fuel station and tobacco store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either:
 - i. Display alcoholic liquor only in a locked case or behind a counter accessible only to employees;
 - ii. Employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or
 - iii. Have more than one employee on duty at all times the business is open to the public.
- b. Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
- c. Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
- d. Not dispense alcoholic beverages from a drive-through window.
4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
5. The conditional use approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of the conditional use approval.
6. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of

the conditional use, the board shall have the authority to amend or revoke the conditional use approval.

- D. Report of Findings.** Upon reasonable suspicion that any fuel station, or retail sales establishment, or other uses with sales for on-premise consumption excluding restaurants and bars, derives more than 40% of its gross receipts from sales, from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40% of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for fuel station and retail sales establishments, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.
- E. Report of Findings - Restaurant.** Upon reasonable suspicion that any restaurant does not derive at least 50% of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50% of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the

total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

F. Report of Findings - Tobacco Store. Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from sales from the sale of alcoholic liquor, wine or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 25% of the gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, which presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

G. Prohibited Accounting for Alcoholic Beverages. The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.

H. Effective Date. All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., E., F., and G. of this subsection. Any fuel station, retail-sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., E., F., and G. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this article.

3.8.2 CONSUMER FIREWORKS SALES

- A. Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.
- B. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be permitted only as a principal permitted use and not as an accessory use.
- C. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.

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Other Use Category

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134-3.9 Accessory Uses

3.9.1 GENERALLY APPLICABLE REGULATIONS

- A. Accessory Uses Allowed.** Accessory uses are allowed only in connection with lawfully established principal uses.
- B. Allowed Uses.** Allowed accessory uses are limited to those expressly regulated in this section as well as those that are determined appropriate by the community development director. In making a determination, the community development director may consider the following criteria:
1. They are customarily found in conjunction with the principal use of the subject property;
 2. They are subordinate and clearly incidental to the principal use of the property; and

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3. They serve a necessary function for or contribute to the comfort, safety or convenience of occupants of the principal use and the community.

C. Time of Construction and Establishment.

Accessory uses may be established only after the principal use of the property is in place.

- #### D. Location.
- Accessory uses must be located on the same lot as the principal use to which they are accessory, unless otherwise expressly stated.

- #### E. Accessory Structures.
- See section [135-2.22 of this code](#) for regulations governing accessory structures.

- #### F. Connection to a Principal Structure.
- A structure which might otherwise be considered an accessory building, but which is connected to the principal structure by a breezeway or other extension of the principal structure containing a functional roof and floor shall, for the purposes of this chapter:

1. Lose its status as an accessory building;
2. Become part of the principal structure; and,
3. Shall be subject to all restrictions applicable to a principal structure.

3.9.2 ACCESSORY HOUSEHOLD UNITS (AHU)

- #### A. Where Allowed.
- Accessory household units (AHUs) are permitted as of right in N and NX districts that allow two, three or four household units on a single lot. An owner of the property shall reside in one of the household units on the property.

B. Number Allowed

1. No more than one AHU is permitted on a single lot.
2. The total number of principal and accessory households on the subject lot may not exceed the permitted number of households allowed on the lot by the applicable zoning district.

C. Location

AHUs may be located internally within the principal dwelling unit or in a detached accessory outbuilding pursuant to section [135-2.22 of this code](#).

D. Other Regulations

1. Only one entrance to a house containing an accessory household unit(AHU) may be located on a facade that faces a street.
2. The floor area of an AHU may not exceed 50% of the floor area within the principal household unit.

3.9.3 DRIVE-IN AND DRIVE-THROUGH USES

- #### A. Description.
- A use accessory to a principal use that offers service directly to occupants of motor vehicles. Such uses are typically associated with restaurants, banks and pharmacies.

- #### B. Exceptions.
- Automatic teller machine kiosks and similar drop-off or pick-up facilities that do not have on-site employees or amplified sound are not classified as drive-in or drive-through facilities if they meet the criteria for classification as an accessory use.

- #### C. Structure.
- See the accessory structure regulations of section [135-2.22.3 of this code](#).

3.9.4 HOME OCCUPATIONS

- #### A. Description.
- Home occupations are business activities or professions conducted wholly or partly within a property as an accessory use to an allowed household living principal use.

- #### B. General Regulations for All Home Occupations.
- All home occupations are subject to the following regulations:

1. The proposed location, design, construction, and operation of the use adequately safeguards the health, safety, and general welfare of persons residing or working adjoining or surrounding property.
2. The use must not unduly increase congestion in the streets, or public danger of fire, safety or flooding.
3. The use must not diminish or impair established nearby property values.
4. The use shall be clearly incidental to or secondary to the residential use on the premises.
5. The use shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.
6. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.

7. No outside operation, storage or display of materials or products shall occur.
8. No more than 50% of the gross floor area of the building or accessory building shall be used for such business, including the storage of materials or products.
9. No alteration of the residential appearance of the premises shall occur unless allowed by applicable building type and design regulations. This includes external structural alterations or site improvements that change the residential character of the lot upon which a home occupation is located. Examples of such prohibited alterations include the addition of commercial-like exterior lighting or the addition of a separate building entrance that is visible from abutting streets.
10. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this code. The home occupation shall not displace, interfere with or impede access to public parking.
11. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.
12. At least one individual engaged in the home occupation must reside in the household unit in which the home occupation is located as their primary place of residence.
13. The home occupation shall be in effect only for so long as the premises are occupied by the person in business.
14. The home occupation shall comply with all applicable codes including local building codes.
15. The home occupation shall meet all general regulations and all applicable supplemental regulations.

C. Board of Adjustment Reconsideration. Any approved home occupation may be subject to reconsideration by the board of adjustment if at any time the zoning enforcement officer determines that the conduct of the occupation does not comply with one or more general regulations for home occupations or applicable supplemental regulations, or has become detrimental to the neighborhood.

D. Type 1 Home Occupations. The following occupations are allowed by-right, subject to compliance with the regulations found in subsections **B** and **D** of this section:

1. Those occupations in which household residents use their home as a place of work with no employees, customers or clients coming to the site; and
2. In-home day care facilities for eight or fewer children.

E. Type 2 Home Occupations.

1. The community development director is authorized to approve Type 2 home occupation uses for the following:
 - a. Commercial services as defined by section 134-3.5.6 of this article;
 - b. Grooming of household pets as defined by section 134-3.5.2.B of this article; and
 - c. Office as defined by section 134-3.5.13 of this article.
2. In addition to the general regulations for home occupations, Type 2 home occupations are subject to the following supplemental regulations:
 - a. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the home occupation must cease between the hours of 7:00 p.m. and 7:00 a.m.
 - b. No more than two clients or customers may be present at any one time on the site of a Type 2 home occupation. Family members of the client or customer shall not be counted towards the two-person limit.
 - c. A maximum of one nonresident employee is allowed with a Type 2 home occupation. For the purpose of this provision, the term "nonresident employee" includes an employee, contractor, business partner, co-owner or any other person affiliated with the home occupation who does not live at the site, but who visits the site as part of the home occupation.

F. Type 3 Home Occupations.

1. The board of adjustment is authorized to approve Type 3 home occupation uses for the following:
 - a. Uses allowed as Type 2 home occupations, subject to the supplemental regulations set forth below;
 - b. Day care as defined by section 134-3.5.7 of this article; and

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- c. Retail sales as defined by section [134-3.5.15 of this article](#).
2. In addition to the general regulations for all home occupations, Type 3 home occupations are subject to the following supplemental use regulations:
 - a. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the home occupation must cease between the hours of 7:00 p.m. and 7:00 a.m.
 - b. No more clients or customers may be present at any one time on the site of a Type 3 home occupation than allowed by board of adjustment approval subject to consideration of the general regulations.
 - c. The board of adjustment shall determine the maximum number of nonresident employees allowed with a Type 3 home occupation. For the purpose of this provision, the term "nonresident employee" includes an employee, contractor, business partner, co-owner or any other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.
- b. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the home occupation must cease between the hours of 10:00 p.m. and 7:00 a.m.
 - c. Outdoor eating for restaurants may be approved for buildings on corners and spaces not abutting another residence.
 - d. Parking lots are allowed in rear yards with a frontage buffer per section [135-7.7 of this code](#) and semi-pervious paving for all drive lanes and spaces. Parking lots are limited to no more than six spaces.

3.9.5 OUTDOOR DINING AND DISPLAY

A. Outdoor Dining. Tables and chairs for patrons of eating and drinking places located outdoors and directly adjacent to the structure containing the associated use.

1. Outdoor dining may be located anywhere on the lot.
2. Outdoor dining may be located on the sidewalk of an adjacent right-of-way of a non-primary street if all of the following requirements are met:
 - a. A sidewalk permit per chapter 102 of this code is approved.
 - b. At least five feet of continuous sidewalk is maintained clear and unobstructed for passing pedestrians.
 - c. No permanent construction is permitted within the right-of-way and all appurtenances shall be removed during the off-season.
 - d. A Type 1 exception may be approved for outdoor dining on a primary street, where no non-primary street is available adjacent to the business and the sidewalk is wide enough to accommodate the above requirements.
3. The maximum size of any outdoor dining shall not exceed the gross floor area of the restaurant interior.

B. Outdoor Display. The outdoor display of merchandise associated with a retail sales use.

1. Outdoor sales displays are permitted anywhere on the lot, but shall not be closer to the right-of-way line than the front building facade.

G. Type 4 Home Occupations.

1. The board of adjustment is authorized to approve Type 4 home occupation uses in the NX2a district for the following:
 - a. Uses allowed as a Type 3 home occupation, subject to the supplemental regulations set forth below;
 - b. Restaurant as defined by section [134-3.5.9.A of this article](#); Restaurants that include the sale of alcoholic liquor, wine, or beer are subject to the regulations found in Table 134-3.1-2 of this article and section [134-3.8.1 of this article](#); and
 - c. Artisan fabrication and production as defined by section [134-3.6.1.A of this article](#).
2. In addition to the general regulations for all home occupations, Type 4 home occupations are subject to the following supplemental regulations:
 - a. A maximum of one nonresident employee per 250 square feet of gross floor area devoted to the Type 4 home occupation use is allowed.

2. Outdoor sales displays on the same lot as a Fuel Station are limited to within five feet of the building or under the fuel canopy, and the height is limited to no more than five feet.
3. Outdoor sales are restricted to those items or merchandise which are permitted in the district.
4. If associated with a principal use on a corner lot, only a single frontage shall be utilized for accessory outdoor display purposes.
5. Merchandise, displays, and other structures in the front or street-side yards shall be removed and stored indoors during non-business hours.
6. Outdoor sales in the interior side or rear yard shall be fenced or walled. Any outdoor sales yard abutting a street right-of-way shall include a frontage buffer per section [135-7.7 of this code](#).
7. The gross square footage of an outdoor sales display area shall not exceed the gross square footage of the interior space of the building containing the associated principal retail sales use on the property.

3.9.6 OUTDOOR STORAGE

Permanent outdoor storage of goods, materials and equipment not typically housed or sold indoors, such as large-scale materials, and building and landscape supplies, but excluding junk and salvage yards.

- A. Outdoor storage is permitted in any I or EX district when associated with an industrial use, and in any CX district when associated with a large format retail use.
- B. Outdoor storage shall be located in the rear or side yard of the lot.
- C. Loose materials shall not be stacked higher than six feet and shall, at a minimum, be stored in a three-sided covered shelter.
- D. Goods, materials and equipment shall not be stacked higher than the height of the perimeter screening.
- E. Materials shall be set back from each lot line a minimum distance as established in, and subject to review pursuant to, chapter 135 of this code.
- F. All outdoor storage areas shall be screened from view of adjacent lots and streets in accordance with, and subject to review pursuant to, chapter 135 of this code.
- G. No person shall park, place, keep or store, or permit the parking or storage of, a stock car, racing car, inoperable or unsafe vehicle, vehicular component

parts, or miscellaneous junk and debris on any public or private property unless it shall be in a completely enclosed building. This subsection shall not apply to legitimate businesses operating in a lawful place and manner; provided, however, that such outside areas are screened from public view.

3.9.7 RESIDENTIAL SUPPORT SERVICE

- A. Residential support services are small-scale personal service and retail sales uses that primarily serve the needs of residents of large residential buildings.
- B. Residential support services are allowed in NX3 districts as an accessory use to any principal group living use with more than 50 residents and in apartment buildings containing more than 30 permanent household units.
- C. Residential support services must be located on the ground floor of the same building as the principal residential use and not exceed 25% of the ground floor area of the building.
- D. Residential support services must have internal access from the principal residential building. External entrances are also allowed.

3.9.8 BOARDING AND ROOMING UNITS

The taking of boarders for more than 30 consecutive days or the leasing of rooms for more than 30 consecutive days is allowed as an accessory use to a principal use in the household living use category, provided the total number of boarders and roomers does not exceed two and an owner of the property resides full-time on the property.

134-3.10 Temporary Uses

3.10.1 DESCRIPTION AND PURPOSE

- A. A temporary use is the use of private property that does not require a building permit and that may or may not comply with the use and lot and building regulations of the zoning district in which the temporary use is located.
- B. The temporary use regulations of this section are intended to permit such occasional, temporary uses and activities when consistent with the purposes and regulations of this zoning ordinance.

3.10.2 AUTHORITY TO APPROVE

- A. All temporary uses require approval of a temporary use permit unless otherwise expressly stated.
- B. The community development director is authorized to establish administrative procedures governing the

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processing, review and approval of temporary use permits.

- C. The community development director is authorized to approve temporary uses that comply with the provisions of this section and to impose conditions on the operation of temporary uses to help ensure that they do not create significant adverse impacts on surrounding uses and that they operate safely and without causing nuisances, consistent with the general purposes of this zoning ordinance.
- D. Temporary uses that do not comply with all applicable regulations and all conditions of approval may be approved in accordance with the conditional use procedures of section [134-6.4 of this article](#). The community development director is authorized to refer any temporary use to the board of adjustment for consideration in accordance with conditional use procedures of section [134-6.4 of this article](#).

3.10.3 GENERAL PROCEDURE

Upon receipt of a complete application for a temporary use permit, the community development director must review the proposed temporary use for its likely effects and surrounding properties and its compliance with the general provisions of this section. The community development director may impose such conditions of approval on the temporary use permit as the community development director determines necessary to mitigate potential adverse impacts. Such conditions may include the following:

- A. Requirements for vehicle access and parking;
- B. Restrictions on hours of operation and duration;
- C. Limitations on signs and outdoor lighting;
- D. Requirements for financial guarantees covering the costs of cleanup or removal of structures or equipment; and
- E. Other conditions necessary to carry out the stated purposes of this zoning ordinance and the municipal code.

3.10.4 AUTHORIZED USES

The community development director is authorized to approve a temporary use permit upon determining that the proposed use is a customary temporary use in the subject location and will generally be compatible with surrounding uses and not be a detriment to public safety.

3.10.5 GARAGE SALES

Garage sales located on lots occupied by residential household unit are permitted without approval

of temporary use permit, subject to the following supplemental regulations:

- A. No more than two garage sales may be conducted on a single lot in any calendar year, with each garage sale limited to no more than four consecutive days in duration. These limits apply on a per-lot basis, regardless of the person conducting the garage sale.
- B. No person conducting a garage sale may sell merchandise at the garage sale acquired solely for resale purposes.
- C. Garage sales are sometimes referred to as "yard sales," "estate sale," "moving sales," "occasional sales" and other similar names. All such sales, by whatever name, are classified and regulated as "garage sales."
- D. Authorization to conduct more than two garage sales in any calendar year requires review and approval with conditional use procedures of section [134-6.4 of this article](#).
- E. Any other type of sale, or any similar sales in excess of the annual number allowed by this section, on lots occupied by household unit(s) shall constitute a commercial use not permitted in a residential zoning district.

Chapter 134. Zoning

ARTICLE 4. WIRELESS TELECOMMUNICATIONS FACILITIES

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134-4. WIRELESS TELECOMMUNICATIONS FACILITIES

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Applicability

134-4.1 Applicability

4.1.1 The provisions of this article apply to all wireless telecommunications facilities unless otherwise expressly indicated.

4.1.2 The provisions of this article shall not be construed as:

- A. Prohibiting administration and enforcement of airport zoning for the protection of navigable airspace, pursuant to Iowa Code chapter 329, by an airport, aviation authority, or municipality;
- B. Infringing upon the jurisdiction of a historic preservation district commission to approve or deny

applications for proposed alterations to exterior features within an area designated as an area of historical significance; or

- C. Infringing upon the jurisdiction of the city, applicable county, or historic preservation commission to approve or deny applications for proposed alterations to exterior features of designated local historic landmarks.

134-4.2 Where Allowed

Wireless telecommunications facilities and services are allowed in those zoning districts and locations indicated in Table 134- 4.2-1 of this article.

TABLE 134- 4.2-1. WIRELESS TELECOMMUNICATIONS FACILITIES

WIRELESS TELECOMMUNICATIONS	DISTRICTS																				
Type of Facility/Service (all subject to applicable regulations of this article)	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	Existing PUD
New tower	●	○	○	○	○	○	○	○	○	○	○	●	●	-	-	-	-	-	○	○	●
Initial placement or installation of transmission equipment on wireless support structures	●	○	○	○	○	○	○	○	○	○	○	●	●	-	-	-	-	-	○	○	●
Modification of an existing tower or existing base station that constitutes a substantial change	●	○	○	○	○	○	○	○	○	○	○	●	●	-	-	-	-	-	○	○	●
Construction or placement of transmission equipment that does not constitute an eligible facilities request	●	○	○	○	○	○	○	○	○	○	○	●	●	-	-	-	-	-	○	○	●
Siting of small wireless facility outside of the public right-of-way on a city-owned structure that is listed on the national register of historic places	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	●	●	●
Siting of small wireless facility on an existing tower, utility pole as defined by Iowa Code chapter 8C, or wireless support structure, on property zoned and used exclusively for single-household residential use or within a previously designated area of historical significance pursuant to Iowa Code section 303.34	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
Installation of a new utility pole or wireless support structure for the siting of a small wireless facility on property zoned and used exclusively for single-household residential use or within a previously designated area of historical significance pursuant to Iowa Code section 303.34	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
Siting of small wireless facility in public right-of-way that is not on property zoned and used exclusively for single-household residential use or within a previously designated area of historical significance pursuant to Iowa Code section 303.34	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●

KEY: ●=permitted subject to the provisions of this article | ○=requires conditional use approval | ①=requires PUD amendment | -=prohibited

TABLE 134- 4.2-1. WIRELESS TELECOMMUNICATIONS FACILITIES

WIRELESS TELECOMMUNICATIONS	DISTRICTS																				
Type of Facility/Service (all subject to applicable regulations of this article)	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3	NM	P1	P2	Existing PUD
Siting of small wireless facility outside of the public right-of-way on a city-owned structure that is not listed on the national register of historic places	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Siting of small wireless facility on an existing tower, utility pole as defined by Iowa Code chapter 8C, or wireless support structure, that is not on property zoned and used exclusively for single-household residential use or within a previously designated area of historical significance pursuant to Iowa Code section 303.34	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Installation of a new utility pole or wireless support structure for the siting of a small wireless facility that is not on property zoned and used exclusively for single-household residential use or within a previously designated area of historical significance pursuant to Iowa Code section 303.34	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Eligible facilities request	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●

KEY: ●=permitted subject to the provisions of this article | ○=requires conditional use approval | ○=requires PUD amendment | --=prohibited

134-4.3 Applications Generally

4.3.1 Every applicant shall file a completed application, in a form provided and approved by the City, as follows:

- A.** Applications for wireless telecommunications service use within the public right-of-way shall comply with this chapter but shall be submitted to the city's traffic engineer in accordance with the requirements of chapter 102 of this code.
- B.** Applications for wireless telecommunications service use upon any city-owned property outside of public right-of-way shall comply with this chapter but shall be submitted to the city's engineering department, real estate division director.
- C.** All other applications for wireless telecommunications service use shall comply with this chapter and be submitted to the City's Permit and Development Center.
- D.** Applicants shall submit the number of copies and attachments required by the applicable city department responsible for receiving applications and shall comply with the city's land use ordinances and permitting process.

4.3.2 Applications for wireless telecommunications service shall not require or be evaluated based upon:

- A.** Except as provided in section 134-4.4 of this article, information about an applicant's business decisions with respect to the applicant's designed service, customer demand for service, or quality of the applicant's service to or from a particular area or site;
- B.** Availability of other potential locations for the placement or construction of a tower or transmission equipment;
- C.** Except as provided in section 134-4.4 of this article, other options for collocation instead of the construction of a new tower or modification of an existing tower or existing base station that constitutes a substantial change to an existing tower or existing base station; however, applicants are encouraged to consider collocation options prior to submitting an application;
- D.** The requirement for removal of existing towers, base stations, or transmission equipment, wherever located, other than requirements stated in policy approved by city council resolution for removal of abandoned towers or transmission equipment;

Applications for New Towers

- E. Surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused towers or transmission equipment can be removed, other than requirements stated in policy approved by city council resolution that are competitively neutral, nondiscriminatory, reasonable in amount, and commensurate with the historical record for local facilities and structures that are abandoned;
- F. Applicant's agreement to provide space on or near the tower, base station, or wireless support structure for the city or for other local governmental or nongovernmental services at less than the market rate for such space or to provide other services via the structure or facilities at less than the market rate for such services;
- G. Environmental testing, sampling, or monitoring requirements, or other compliance measures, for radio frequency emissions from transmission equipment that are categorically excluded under FCC rules for radio frequency emissions pursuant to 47 CFR 1.1307(b)(1);
- H. Regulations or procedures for radio frequency signal strength or the adequacy of service quality;
- I. Perceived or alleged environmental effects of radio frequency emissions, as provided in 47 USC 332(c)(7)(B)(iv); or
- J. Any review requirements or review criteria prohibited by Iowa Code Chapter 8C, the Spectrum Act, similar FCC regulations, or other applicable state and federal law.

4.3.3 The city shall not deny an application due to the type of transmission equipment or technology to be used by the applicant, or preference for type of infrastructure or technology; and shall not prohibit the placement of emergency power systems that comply with federal and state environmental requirements.

4.3.4 The city further shall approve or deny applications for small wireless facilities, and for new utility poles and wireless support structures installed for the siting of a small wireless facility, in accordance with the requirements of Iowa Code section 8C.7A(c)(3) and any other applicable sections of Iowa Code chapter 8C relating thereto.

4.3.5 The application fees to be paid shall be determined by reference to a schedule of permit fees, which shall be developed in conformance with the requirements of Iowa Code Section 8C.3(9), shall be

updated as needed, and shall be approved by the city council by resolution.

4.3.6 Applications shall remain valid for a period of two years from the date of final approval, including disposition of any appeals. Construction of approved structures or facilities shall be commenced within two years of final application approval and diligently pursued to completion.

134-4.4 Applications for New Towers

In addition to the general application requirements of section 134-4.3 of this article, applications for new towers must include the following:

4.4.1 An explanation of the reason for choosing the proposed location and why collocation was not selected, including a sworn statement from an individual with responsibility over placement of the tower attesting that collocation within the area determined by the applicant to meet the applicant's radio frequency engineering requirements for the placement of a site would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to the applicant; and

4.4.2 Propagation maps, to be used solely for the purpose of identifying the location of the coverage or capacity gap or need for applications for new towers in an area zoned for residential use. Such maps are to be used for no other purpose.

134-4.5 Review and Approval Procedures

4.5.1 SMALL WIRELESS FACILITIES AND UTILITY POLES

Applications for small wireless facilities and for utility poles shall be processed as follows:

- A. The community development director, or other city representative as applicable per section 134-4.3.1.A-C, shall approve or disapprove the application, by written decision provided to the applicant, and documenting the basis for denial if applicable including the specific code provisions or standards on which the denial is based:
 - 1. Within 60 days following the submission of a completed application for only collocation of small wireless facilities on pre-existing structures;
 - 2. Within 90 days following the submission of a completed application for utility poles, for new construction of facilities for placement of small wireless facilities, and for both or either of those

combined with collocations of small wireless facilities on pre-existing structures; or

3. Within 120 days following the submission of a completed application for collocation(s) of small wireless facilities on pre-existing structures, for utility poles, for new construction of facilities for placement of small wireless facilities, or for any combination thereof, if a 30-day extension is applicable and notification given in accordance with Iowa Code Section 8C.7A(3)(c).

- B. An applicant whose application is denied shall have an opportunity to cure any deficiencies identified by the city as the basis for the denial and to submit a revised application within 30 days following the date of denial without paying an additional fee. The city shall approve or deny a revised application within 30 days following submission. The city shall not identify any deficiencies in a second or subsequent denial that were not identified in the original denial.

4.5.2 WIRELESS TELECOMMUNICATIONS FACILITIES OTHER THAN SMALL WIRELESS FACILITIES AND UTILITY POLES

Applications for any wireless telecommunications service use other than for small wireless facilities, utility poles, or eligible facilities requests, will not be accepted by the city for processing unless a pre-application conference has occurred in accordance with section 134-6.1.3 of this chapter. Applications for any wireless telecommunications service use other than for small wireless facilities and for utility poles shall be processed as follows:

- A. Within 30 days of acceptance of an application, city staff shall provide written notice to the applicant of all deficiencies in the application relating to the city's applicable zoning regulations and building permit requirements, setting forth the city code sections and city policies for reference. The applicant shall provide all required information or necessary revisions as set forth in such notice.
- B. Within 10 days of the date that the applicant supplements its submission in accordance with the city's notice, city staff shall provide written notice to the applicant of any continued deficiencies in the application, setting forth the city code sections and city policies for reference as also provided in the original notice. The applicant may supplement its submission, and the city may provide notice of deficiencies, until such time as the applicant provides all required information and/or makes all necessary revisions to its plans.

- C. No application shall be deemed complete until all deficiencies stated in such notices, if any, have been cured.

- D. Unless extended due to notices and responses as described above in subsections A. and B. of this subsection, the community development department director shall approve or disapprove the application, by written decision provided to the applicant:

1. Within 150 calendar days of the date of submission for applications for new towers;
2. Within 60 calendar days of the date of submission for applications for eligible facilities requests; or
3. Within 90 calendar days of the date of submission for applications for
 - a. Initial placement or installation of base stations or transmission equipment on wireless support structures;
 - b. Modification of an existing tower or existing base station that constitutes a substantial change; or
 - c. A request for construction or placement of transmission equipment that does not constitute an eligible facilities request.

4.5.3 ERRONEOUS SUBMITTAL

If the community development department director finds that an application submitted under this section does not meet the definition of an eligible facilities request, the city shall notify the applicant in writing that the application shall be processed as an application for a new tower, or as an application for initial placement or installation of a base station or transmission equipment on wireless support structures, or for modification of an existing tower or existing base station that constitutes a substantial change, or for a request for construction or placement of transmission equipment that does not constitute an eligible facilities request, or as a small wireless facility application, or as an application for installation of a utility pole or wireless support structure for the siting of a small wireless facility, accordingly, and the applicable timeframe for review shall commence on the date stated on said notice.

4.5.4 CONDITIONAL USES

Conditional use approval from the board of adjustment shall be required for approval of wireless telecommunications service uses as identified in Table 134- 4.2-1 of this article. If conditional use approval is

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Design Requirements for New and Modified Towers

required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to board of adjustment action thereon and in accordance therewith.

4.5.5 ZONING COMPLIANCE AND SITING REVIEW

Zoning compliance and siting review by the community development director shall be required for approval of wireless telecommunications service uses as identified in Table 134- 4.2-1 of this article. If zoning compliance and siting review is required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to such review and in accordance therewith.

4.5.6 PUD, PLANNED UNIT DEVELOPMENT (LEGACY) DISTRICT AMENDMENT

Planned Unit Development (PUD – Legacy) District amendment pursuant to section 134-2.2.9.C of this chapter of this chapter, shall be required for approval of wireless telecommunications uses as identified in Table 134- 4.2-1 of this article. If PUD amendment is required, the approval or disapproval of the application shall occur within the applicable timeframe and subsequent to city council action thereon and in accordance therewith.

4.5.7 APPEALS

Appeal of the city's written decision, by the board of adjustment or by the community development department director, as applicable, shall be made to any court of competent jurisdiction. Notwithstanding the foregoing, the decision of the city's traffic engineer shall be treated as the city's final decision for an appeal relating to an application for wireless telecommunications service use within the public right-of-way, and the decision of the city's engineering department, real estate division director or of the city manager, as applicable, shall be treated as the city's final decision for an appeal relating to an application for wireless telecommunications service upon any city-owned property outside of public right-of-way.

134-4.6 Design Requirements for New and Modified Towers

The following requirements and criteria are applicable to new towers and modifications of existing towers that constitute a substantial change:

4.6.1 A tower shall be set back from the property line of any adjoining residentially zoned property a distance equal to the height of the tower and its related equipment, unless a lesser setback is required due to the type of transmission equipment or technology

proposed by the applicant, and the tower and related equipment shall be adequately screened from adjoining residential uses.

4.6.2 A tower and any related equipment thereon shall be painted a color compatible with the surrounding area.

4.6.3 Except for the minimum lighting, if any, necessary to comply with the airport height and hazard zoning regulations in chapter 22 of this code and any applicable federal regulations, no lights may be mounted on a tower or its related equipment, and the tower and antenna shall not be illuminated.

4.6.4 The height of a tower, inclusive of any related equipment thereon, shall not exceed 180 feet unless additional height is required due to the type of transmission equipment or technology proposed by the applicant.

4.6.5 Any service building or equipment located at grade shall be adequately screened from adjoining residential uses and shall be compatible with the building requirements set forth in chapter 135 of this code for the applicable zoning district.

4.6.6 The adverse visual impact of a tower shall be minimized through careful design, siting, landscape screening and innovative camouflaging techniques. Unless otherwise required due to the type of transmission equipment or technology proposed by the applicant, at a tower site, the design of the buildings and related equipment shall use materials, colors, textures, screening, and landscaping that will blend the facilities with the natural setting and the built environment. If the built environment is anticipated to change significantly during the usable life of the tower, such as within an urban renewal district or recently annexed areas, the tower or structure shall be compatible with the anticipated future built environment.

4.6.7 Modifications to existing towers shall not defeat existing concealment elements of the tower, and shall comply with all conditions associated with the prior approval of construction or modification of the tower, including but not limited to building code, zoning ordinance, and permit conditions, unless required due to the type of transmission equipment or technology proposed by the applicant.

4.6.8 Modifications shall not increase the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets, and shall not cause excavation or deployment to occur outside

the current site of the tower, unless required due to the type of transmission equipment or technology proposed by the applicant.

134-4.7 Design Requirements for Wireless Telecommunications Facilities other than New and Modified Towers

The following requirements and criteria shall apply to all wireless telecommunication service uses other than new towers or modifications of existing towers that constitute a substantial change. For purposes of this subsection only, unless otherwise specified, "transmission equipment" includes "transmission equipment," "base station," "small wireless facility," and "utility pole."

4.7.1 Transmission equipment shall be placed upon or within a wireless support structure such as to minimize visibility of the transmission equipment to the fullest extent technologically possible, unless visible placement is required due to the type of transmission equipment or technology proposed by the applicant, including but not limited to the following:

- A.** Wall mounted transmission equipment shall be mounted in a configuration that is as flush to the wall as technologically possible to ensure both the functionality of the antenna and to minimize visual impact and shall not project above the wall on which it is mounted.
- B.** Transmission equipment mounted on roof appurtenances, such as mechanical equipment, must be as flush mounted to the existing mechanical equipment or roof appurtenance as technologically possible to ensure both the functionality of the antenna and to minimize visual impact.

4.7.2 Transmission equipment shall be designed and located so as to be architecturally compatible with the wireless support structure upon which the transmission equipment is mounted and to minimize any adverse aesthetic impact, unless otherwise required due to the type of transmission equipment or technology proposed by the applicant. A small wireless facility to be sited in city right-of-way on a utility pole, as defined herein or as defined by Iowa Code chapter 8C, shall reasonably match the aesthetics of an existing utility pole or wireless support structure that incorporates decorative elements.

4.7.3 Except for the minimum lighting, if any, necessary to comply with the airport height and hazard zoning regulations in chapter 22 of this code and any applicable federal regulations, no lights may be

mounted on transmission equipment, and transmission equipment shall not be illuminated.

4.7.4 Transmission equipment upon a wireless support structure, and any related equipment located at grade, shall be adequately screened from adjoining residential uses.

4.7.5 The height of a wireless support structure, inclusive of the transmission equipment, shall not exceed the maximum height allowed by the applicable building type regulations, as established in Chapter 135 of this code, unless additional height is required due to the type of transmission equipment or technology proposed by the applicant. Notwithstanding the foregoing, the height of a utility pole installed in public right-of-way shall not exceed the greater of ten feet in height above the tallest utility pole existing on or before July 1, 2017, located within 500 feet of the utility pole in the same public right-of-way, or forty feet in height above ground level.

4.7.6 A wireless support structure, and transmission equipment, shall be set back from the property line of any adjoining residentially zoned property as required by the bulk regulations of the applicable zoning district.

4.7.7 Other than replacement of existing structures, new utility poles shall comply with the city's underground placement requirements in areas designated as underground districts pursuant to resolution or ordinance adopted by the city council prior to the date the application is filed in accordance with this section, and in areas zoned and used for single-household residential use.

4.7.8 The number of new utility poles or wireless support structures may be reasonably limited, consistent with the protection of public health, safety, and welfare, and provided that such limitation does not have the effect of prohibiting or significantly impairing a wireless service provider's ability to provide wireless service within the area of a proposed new structure.

4.7.9 Modifications to an existing base station shall not defeat existing concealment elements of the base station, and shall comply with all conditions associated with the prior approval of construction or modification of the base station, including but not limited to building code, zoning code, or permit conditions, unless required due to the type of transmission equipment or technology proposed by the applicant.

4.7.10 Modifications to an existing base station shall not increase the standard number of new equipment

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Board of Adjustment Prohibition

cabinets for the technology involved, not to exceed four cabinets, and shall not cause excavation or deployment to occur outside the current site of the base station, unless required due to the type of transmission equipment or technology proposed by the applicant.

134-4.8 Board of Adjustment Prohibition

4.8.1 To ensure that this article is interpreted consistently with state and federal law, the board of adjustment is specifically prohibited from hearing appeals or considering variances or exceptions relating to definitions, or to procedural or other requirements set forth in state and federal law, including but not limited to Iowa Code Chapter 8C, the Spectrum Act, and similar FCC regulations.

4.8.2 If the denial of any appeal for relief will result in denial of wireless telecommunications services, or if approval of an appeal for relief is necessary due to the type of technology proposed by an applicant, then the board of adjustment shall grant the relief sought, which may be subject to conditions allowed by city, state, and federal law.

134-4.9 Definitions

The definitions of this section apply solely in administering and interpreting the wireless telecommunications regulations of this ordinance. The following words, terms and phrases have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Applicant: Any person, or any person acting on behalf of another person, engaged in the business of providing wireless telecommunications services or the wireless telecommunications infrastructure required for wireless telecommunications services and who submits an application. This definition of "applicant" shall apply specifically to this article.

Application: A request submitted by an applicant for any wireless telecommunications service use requiring conditional use approval or zoning compliance and siting review as set forth in this article. This definition of "application" shall apply specifically to this article.

Base Station: Equipment not associated with a tower or a supporting structure that is not a tower, at a fixed location, that, at the time that the application is filed, supports or houses an antenna, transceiver, distributed antenna system (DAS) equipment, small cell equipment, or other associated equipment that enables FCC-licensed or FCC-authorized wireless communications between user equipment and a communications

network and that has been previously reviewed and approved under the applicable zoning or siting process or under another state or local regulatory review process. "Base station" includes but is not limited to equipment associated with wireless communications services such as private, broadcast, and public safety services and unlicensed wireless services and fixed wireless services such as microwave backhaul; radio transceivers; antennas; coaxial or fiberoptic cable; regular and backup power supplies; and comparable equipment, regardless of technological configuration.

Collocation: The mounting or installation of transmission equipment on an existing tower or base station for the purpose of transmitting or receiving radio frequency signals for communications purposes.

Distributed Antenna System (DAS): A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Eligible Facilities Request: A request for modification of an existing wireless tower or base station, including legal non-conforming structures, that involves collocation, removal, or replacement of transmission equipment, and that does not constitute a substantial change to the tower or base station. "Eligible facilities request" applies only to towers or base stations for which the state or local government has approved the construction of the structure with the sole or primary purpose of supporting covered transmission equipment, such as existing wireless towers, or where the state or local government has previously decided that the site is suitable for wireless facility deployed and approved the siting of transmission equipment that is part of a base station on that structure, such as other existing support structures. "Eligible facilities request" includes hardening through structural enhancement where such hardening is necessary for a covered collocation, replacement, or removal of transmission equipment and structural enhancement so long as the modification of the underlying tower or base station is performed in connection with and is necessary to support a collocation, removal, or replacement of transmission equipment, but does not include replacement of the structure upon which the transmission equipment is located.

Equipment Cabinet: A cabinet mounted on the ground or on a wireless support structure used to support equipment associated with a wireless telecommunication facility.

Existing: Previously reviewed and approved under applicable zoning or siting processes, or under another

form of affirmative state or local regulatory review process. "Existing" includes a wireless tower that does not have a permit or other zoning approval because it was not in a zoned area when it was built, but was otherwise lawfully constructed; and a structure that, at the time of the application, supports or houses a base station, even if the structure was not built for the sole or primary purpose of providing such support. "Existing" does not include a tower or base station that was constructed or deployed without proper review; was not required to undergo siting review; does not support transmission equipment that received another form of affirmative state or local regulatory approval; or any structure that is merely capable of supporting wireless transmission equipment whether or not it is providing such support at the time of the application. This definition of "existing" shall apply specifically to this article.

FCC: Federal Communications Commission.

Notice: Written document provided by city to applicant, stating all or continued deficiencies in an application relating to the city's applicable zoning regulations and building permit requirements, setting forth the city code sections and city policies for reference, or identifying erroneous submittal of an application, or giving any other notice required by this article other than a written decision.

Site: All of the following:

1. For towers not within public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. This definition of "site" shall apply specifically to this article.
2. For other towers in the public right-of-way and all base stations, the area in proximity to the structure and to other transmission equipment deployed on the ground at the time of the application. This definition of "site" shall apply specifically to this article.

Small Wireless Facility: Operator-controlled, low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi, with a range from 10 meters to several hundred meters, and further defined as follows:

1. Each antenna is no more than six cubic feet in volume.
2. All other equipment associated with the small wireless facility is cumulatively no more than twenty-eight cubic feet in volume.

3. For purposes of this "small wireless facility" definition, volume shall be measured by the external displacement of the primary equipment enclosure, not the internal volume of such enclosure. An associated electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switch, cutoff switch, cable, conduit, and any equipment that is concealed from public view within or behind an existing structure or concealment may be located outside of the primary equipment enclosure and shall not be included in the calculation of the equipment volume. "Small wireless facility" does not include any structure that supports or houses equipment described in this definition.

Spectrum Act: The federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-22, codified at 47 U.S.C. Section 1455 ("Section 6409 Wireless Facilities Deployment"), approved February 22, 2012.

Substantial Change: Any of the following:

1. The installation of more than the standard number of new equipment cabinets for the technology involved, and not to exceed four cabinets.
2. Any excavation or deployment outside the current site of the tower or base station.
3. Modifications that defeat the existing concealment elements of the tower or base station.
4. Modifications that do not comply with conditions associated with the prior approval of construction or modification of the tower or base station, including but not limited to building code, zoning code, or permit conditions, and that exceed one or more of the "substantial change" thresholds identified in this definition.
5. An increase in height, as follows:
 - i. For towers not within public rights-of-way, a cumulative increase in the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, measuring the change in height from the dimensions of the tower as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.
 - ii. For towers within public rights-of-way, a

Definitions

cumulative increase in the height of the tower by more than 10% or 10 feet, whichever is greater, measuring the change in height from the dimensions of the tower as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.

- iii. For all base stations, an increase in height of the base station by more than 10% or 10 feet, whichever is greater, measuring the change in height from the height of the original structure, rather than the height of the previously approved antenna.

6. An increase in width, as follows:

1. For towers not within public rights-of-way, an increase in width from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
2. For towers within public rights-of-way, and for all base stations, an increase in width from the edge of the structure more than six feet.

Tower (or Communication Tower or Wireless Tower): A structure constructed with the sole or primary purpose of supporting FCC-licensed or authorized transmission equipment, including transmission of personal wireless service, broadband service, and mobile and fixed broadband service.

Transmission Equipment: Any equipment, other than equipment related to a "small wireless facility" as defined in this section, that facilitates transmission for any FCC-licensed or FCC-authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply used in any technological configuration associated with any FCC-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast service, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband. The term "related equipment", when used in this chapter in reference to a tower or a base station, includes but is not limited to "transmission equipment."

Utility Pole: A pole or similar structure owned or installed by an applicant that is designed specifically for and used to carry one or more small wireless facilities

and/or transmission equipment or wires for wireless telecommunications service use.

Wireless Support Structure (or Structure): A structure that exists at the time an application is submitted and is capable of supporting the attachment or installation of transmission equipment in compliance with applicable codes, including but not limited to water towers, buildings, and other structures, whether within or outside the public right-of-way. "Wireless support structure" or "structure" does not include a tower or existing base station.

Written Decision: The city's decision, provided to an applicant in writing, documenting approval or disapproval (denial) of an application, and further documenting the basis for denial if applicable including the specific code provisions or standards on which the denial is based. The date stated on a written decision constitutes the "date of denial" or the "date of approval", as applicable, for purposes of this article. Written decisions may be issued by the community development director, or by the city traffic engineer, or by the city's engineering department, real estate division director or the city manager, or by decision and order of the board of adjustment, as applicable in accordance with this article.

Zoning Compliance and Siting Review:

Administrative review by the community development director to determine if a wireless telecommunication use proposed in an application complies with this article, this chapter, and chapter 135 of this code. Approval or disapproval of an application may be based on the determination made during the zoning compliance and siting review.

Chapter 134. Zoning

ARTICLE 5. SIGNS

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134-5.1 General

5.1.1 INTENT

Regulation of the size, height, number and spacing of signs throughout the city is necessary to promote public health, safety and welfare by:

- A. Promoting the aesthetic and environmental values of Des Moines by providing for signs that serve as effective means of communication and do not impair the attractiveness of the city as a place to live, work, visit, and shop;
- B. Protecting public investment in and the character and dignity of public buildings, streets, and open spaces;
- C. Protecting the distinctive community character of Des Moines which is produced by its unique natural features, neighborhoods, street patterns, skyline, architectural features, historic resources, rivers, and tree canopy;
- D. Ensuring that signs are designed and proportioned in relation to the structures to which they are attached, adjacent structures, and the streets on which they are located;
- E. Enhancing public right-of-way and other public spaces by preserving views and fostering the unobstructed growth of trees;
- F. Providing an environment which will safeguard and enhance neighborhood livability and property values, and promote the development of business in the city;
- G. Encouraging sound practices in respect to size and placement of signs; and
- H. Reducing hazards to motorists, bicyclists, and pedestrians caused by visual distractions and obstructions.

5.1.2 SEVERABILITY

This article must be interpreted in a manner consistent with the First Amendment to the United States Constitution. If one or more provisions of this article, or the application of this article, is found by a court of competent jurisdiction to be unlawful, invalid, unenforceable, or preempted by applicable state or federal law or regulations, such provisions are deemed to be severed from this article. The remaining provisions of this article remain in full force and effect.

5.1.3 FINDINGS

In conjunction with the adoption of the regulations of this article and consistent with the purposes set forth in section 134-5.1.1 of this article, the city council makes

all of the following findings:

- A. Signs can obstruct views, distract motorists, displace alternative uses for land, contribute to blight and visual clutter, and pose other problems that legitimately call for regulation.
- B. A sign placed on land or on a building for identification, protection or directing persons to a use conducted therein must be deemed to be an integral but accessory and subordinate part of the principal use of land or building.
- C. The intent of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and livable community, protection against destruction of or encroachment on convenience to citizens and encouraging economic development.
- D. The further intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant while balancing the purposes and individual and community interests identified in section 134-5.1.1 of this article.
- E. This article further is intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.
- F. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs.
- G. This article and the regulations herein are not anticipated to entirely eliminate all of the harms that may be created by the installation and display of signs. Rather they strike an appropriate balance that preserves ample channels of communication by means of visual display while reducing and mitigating the extent of the harms caused by signs.

5.1.4 SCOPE AND APPLICABILITY

All signs are subject to the regulations of this article and all other applicable provisions of this chapter and the design regulations of chapter 135 of this code. Signs erected, maintained, or otherwise posted, owned, or leased by local, state, or federal governmental entities in the public right-of-way are not subject to the regulations of this article.

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Prohibited Signs and Sign Characteristics

5.1.5 SUBSTITUTION

Any non-commercial message may be substituted for the copy on any commercial sign allowed by and compliant with this article, and any commercial message may be substituted for the copy on any non-commercial sign allowed by and compliant with this article.

134-5.2 Prohibited Signs and Sign Characteristics

The following signs and sign characteristics are prohibited:

5.2.1 Signs for which a required permit has not been issued;

5.2.2 Signs located and maintained in such a manner as to constitute a nuisance as provided in the municipal code;

5.2.3 Signs or other attention-getting devices that are permanently attached to the ground or to a structure and that contain or consist of banners, balloons, posters, pennants, ribbons, streamers, spinners or other similarly moving devices, except as expressly allowed in this article;

5.2.4 Signs that are permanently attached to the ground or to a structure and that swing or otherwise noticeably move as a result of wind pressure because of the manner of their suspension or attachment;

5.2.5 Building mounted and fascia signs that encroach more than 18 inches on or over a street right-of-way at a height less than eight feet above grade without an areaway permit pursuant to chapter 102 of this code;

5.2.6 Signs that extend above the roof line of the building to which they are attached, except in cases where roof signs are expressly allowed, or signs that cover all or a portion of the roof of a building surface;

5.2.7 Electronic display signs and multi-vision signs that do not comply with applicable operational regulations pursuant to section 134-5.7 of this article;

5.2.8 Search lights, strobe lights, rotating beacon lights, and flashing lights that are visible from public right-of-way, except as otherwise expressly allowed by this article or required by law;

5.2.9 Signs located in or obstructing a required parking or loading space, or that otherwise obstruct vehicular or pedestrian access or circulation, or that pose any other hazard to motorized or non-motorized travel;

5.2.10 Signs that obstruct any fire escape, required exit window or door opening used as a means of egress;

5.2.11 Signs that interfere with an opening required for ventilation, except that signs may cover transom windows when not in violation of applicable building and fire safety codes;

5.2.12 Signs affixed directly to a tree, utility pole or traffic control device which signs are not owned, operated, or otherwise permitted by the city;

5.2.13 Signs that obstruct, impair, obscure, interfere with the view of, or that may be confused with, any authorized traffic control sign, signal, or device;

5.2.14 Sign displays with a brightness of such intensity or brilliance that they impair the vision or endanger the safety and welfare of any pedestrian, cyclist, or person operating a motor vehicle;

5.2.15 Signs attached to or painted on an inoperable or unlicensed vehicle, motorized or non-motorized;

5.2.16 Signs attached to or painted on a licensed motor vehicle that is parked on the same property for more than 10 hours per day and:

A. Is uncovered and visible from the public right-of-way, or

B. Is parked within 25 feet of the street right-of-way.

5.2.17 Pole signs except as expressly allowed by the regulations of this chapter;

5.2.18 Painted signs, other than historic signs, murals, and signs in or on windows;

5.2.19 Signs located within the public right-of-way unless an applicable permit is obtained pursuant to chapter 102 of this code;

5.2.20 Signs located on city-owned property that are not owned, operated, or otherwise permitted by the city;

5.2.21 Temporary signs posted or maintained in exchange for a fee;

5.2.22 Any section that is located in a vision clearance triangle; and

5.2.23 Any sign that is posted or maintained in violation of this article.

134-5.3 Regulations of General Applicability

5.3.1 SETBACKS, SEPARATION AND SPACING

- A. Unless otherwise expressly stated in the sign regulations of this article, all freestanding signs must be located outside the vision clearance area per chapter 114 of this code.
- B. All projecting signs, roof signs and freestanding signs must be separated from all other roof signs, projecting signs and freestanding signs by a minimum distance of 30 feet.
- C. Signs with an area of more than 250 square feet that are visible from N-zoned lots must be separated from any N-zoned lot by a minimum distance of 200 feet.

5.3.2 ILLUMINATION AND SERVICE LINES

- A. The lighting or illumination of any sign must be effectively shielded to prevent glare or light from being directed at any portion of the travel lanes of any street or be of such low intensity or brilliance so as to not cause glare or to impair the vision of motorists or interfere with any driver's operation of a motor vehicle.
- B. Except for authorized electronic display signs, the illumination on the face of any allowed illuminated sign must be by constant light and may not exceed 70 foot candles measured at a distance of two feet from the face of the sign and must comply with the supplemental regulations that apply to electronic and multi-vision displays contained in section 134-5.7.6 of this article.
- C. All electrical, telephone, and cable television transmission systems serving a sign shall be placed underground whenever reasonably practicable.

5.3.3 LOTS OR BUILDINGS WITH MULTIPLE PUBLIC STREET FRONTAGES

Lots or buildings with multiple public street frontages earn signage facing each specific street based on the length of the applicable frontage to that street. The sign allowance earned on one street frontage may not be transferred to another street frontage. Utilized signage shall not exceed earned signage for the frontage where the signage is or will be installed.

5.3.4 PLACEMENT OF WALL SIGNS

- A. A non-frontage wall may use up to 50% of the signage area earned on one frontage wall.

- B. Illuminated signs may not be placed on a wall facing an N or NX district.

134-5.4 Signs Allowed in All Districts

5.4.1 INTEGRAL SIGNS

Non-illuminated signs carved, extruded or embedded into the subject building or made of bronze, aluminum, or other similar permanent material and made an integral part of the building to which they are attached are allowed in all zoning districts. Such signs may not exceed four square feet in area.

5.4.2 SIGNS APPURTENANT TO DRIVEWAYS

- A. One sign may be installed at each driveway serving a lot occupied by an allowed nonresidential use, or a residential use with more than 15 household units or 50 residents. Such signs must be located within 10 feet of the intersection of the driveway and the street right-of-way and may not exceed four square feet in area or five feet in height including sign base.
- B. Off-street parking areas with a capacity of more than 10 vehicles, multi-tenant developments and uses on lots exceeding 50,000 square feet in area may display internal site driveway signs. Such signs must be located within 10 feet of an internal site driveway or drive aisle and may not exceed 12 square feet in area or eight feet in height including sign base.
- C. Signs appurtenant to driveways are subject to the illumination requirements of the district in which they are located.
- D. All signs appurtenant to driveways that are visible from public right-of-way must be monument signs in accordance with section 134-5.6.5 of this article. Interior signs that are not visible from the public right-of-way may be pylon signs or monument signs.
- E. Signs painted on or installed flush with the driveway surface are not be subject to the regulations in this subsection.

5.4.3 SIGNS APPURTENANT TO DRIVE-THROUGH USES

Signs appurtenant to drive-through uses are permitted on the site of any allowed drive-through use, subject to the regulations of this subsection.

- A. Signs appurtenant to drive-through uses must be located within 10 feet of a drive-through lane.
- B. One primary sign appurtenant to a drive-through use not to exceed 36 square feet in area or eight feet in height is allowed per order station up to a maximum of two primary signs appurtenant to drive-through

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Signs Allowed in All Districts

use per lot. One secondary sign appurtenant to a drive-through use not to exceed 15 square feet in area or six feet in height is allowed per lot.

- C. All signs appurtenant to drive-through uses that are visible from public right-of-way must be monument signs in accordance with section 134-5.6.5 of this article. Interior signs that are not visible from the public right-of-way may be pylon signs or monument signs.
- D. Signs appurtenant to drive-through uses must be set back at least 25 feet from N-zoned lots.
- E. Signs appurtenant to drive-through uses must be oriented to be visible by motorists in allowed drive-through lanes.

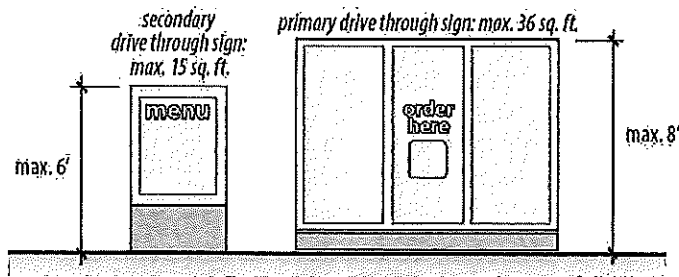


Figure 134-5.9-G. Drive-through Sign

5.4.4 SIGNS IN OR ON WINDOWS

Non-illuminated signs displayed inside a window or on a window including decal or painted signs, and neon and similar signs displayed inside a window, are allowed in all zoning districts. Such signs may not exceed 8.5 inches by 11 inches in size per window opening in N or NX districts and may not cover more than 25% of the window in all other districts.

5.4.5 SIGNS ON A CAMPUS

One sign may be installed for each sidewalk intersection or building entrance along a pedestrian route serving a lot or lots occupied by an allowed educational, commercial, residential, or similar campus use. Such signs shall be the same size, color and general design, and should be located within five feet of a sidewalk intersection or building entrance and may not exceed four square feet in area or eight feet in height including sign base. If visible from the public right-of-way, such signs must be monument signs; interior signs that are not visible from the public right-of-way may be pylon signs or monument signs.

5.4.6 SIGNS USED ON A TEMPORARY BASIS

Signs used on a temporary basis are intended to be temporary in nature rather than permanently attached to the ground or to a structure. The following

temporary signs are allowed with the consent of the subject property owner.

- A. **A, N, NX, and NM Districts.** Signs used on a temporary basis is permitted at any time, for a limited period of time not to exceed six months, in the A, N, NX, and NM districts. Any sign used on a temporary basis in these districts shall not exceed four square feet in area and three feet in height.
- B. **All Districts other than A, N, NX, and NM Districts.** One sign used on a temporary basis is permitted at any time, for a limited period of time not to exceed six months, in all districts other than A, N, NX, and NM districts. Any sign used on a temporary basis in these districts shall not exceed 32 square feet in total area or eight feet in height. Type 1 and Type 2 zoning exceptions are available to the number and size of signs used on a temporary basis, pursuant to sections 134-6.5.2.8 and 134-6.6.2.7 of this chapter.

5.4.7 SIGNS REQUIRED FOR PUBLIC SAFETY OR GOVERNMENTAL INTEREST

Signs that are an important component of measures necessary to serve the compelling governmental interest of protecting public safety, traffic safety, complying with legal requirements, serving the requirements of emergency response and protecting property rights or the rights of persons on property, including the following:

- A. Where a federal, state or local law requires a property owner to post a sign on the owner's property to warn of a danger or to prohibit access to the property either generally or specifically, the owner or occupant must comply with the federal, state or local law to exercise that authority by posting a sign on the property. If the federal, state or local regulation describes the form and dimensions of the sign, the property owner or occupant must comply with those requirements, otherwise, when not defined, the sign shall be no larger than two square feet and located in a place on the property to provide access to the notice that is required to be made.
- B. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of official or directed duties; provided, that all such signs must be removed by the property owner or occupant no more than ten days after their purpose has been accomplished or as otherwise required by law.

134-5.5 Signs in A, N, NX, and NM Districts

5.5.1 APPLICABILITY

The regulations of this subsection apply in A, N, NX, and NM zoning districts.

5.5.2 PERMITTED SIGN TYPES

Monument signs are permitted in A, N, NX, and NM districts, in addition to those signs identified in section 134-5.4 of this article.

5.5.3 ILLUMINATION

- A. Signs on A- or N-zoned lots may be illuminated only by indirect illumination.
- B. Electronic displays are expressly prohibited in A, N, NX, and NM districts.

5.5.4 MONUMENT SIGNS

A. Maximum Number, Area and Height

The maximum number, area and height of signs allowed in A, N, NX and NM districts may not exceed the limits established in Table 134-5.5-1 of this article.

B. Sign Base

1. The sign base must have a height of at least two feet or 25% of the overall sign height, whichever is greater.
2. The sign base must be at least as wide as the sign face.
3. The sign base must be solid and opaque, and constructed of brick, stone, concrete block, or similar permanent, durable material complementing the exterior of the primary building on the lot.

TABLE 134-5.5-1. SIGNS IN A, N, NX, AND NM DISTRICTS

Principal Use	Maximum		
	No. Permitted	Area (sq. ft.)	Height (ft)
RESIDENTIAL USES			
Household Living			
1 - 7 units	Only those signs allowed in all districts pursuant to section 134-5.4 of this article		
8 - 15 units	1	4	8
16 + units	1	24	8
Group Living			
1 - 49 residents	1	4	8
50+ residents	1	24	8
PUBLIC, CIVIC, & INSTITUTIONAL USES			
Permitted Uses	Option A: 1 per building and 1 per street frontage	24 each	8
	Option B: in lieu of multiple signs, 1 single sign	75	8

134-5.6 Signs in DX, MX, RX, CX, EX, I and P Districts

5.6.1 APPLICABILITY

The regulations of this section apply in DX, MX, RX, CX, EX, I and P districts.

5.6.2 PERMITTED SIGN TYPES

The sign types identified in Table 134-5.6-1 of this article are allowed in DX, MX, RX, CX, EX, I and P zoning districts in addition to those signs identified in section 134-5.4 of this article.

5.6.3 ILLUMINATION

- A. Signs on DX-, MX-, RX-, CX-, EX-, I- and P-zoned lots may be indirectly illuminated or internally illuminated, unless otherwise specified.
- B. Electronic displays in DX, MX, RX, CX, EX, I and P districts may be allowed in accordance with section 134-5.7 of this article.

5.6.4 WALL SIGNS

- A. **Maximum Number and Area.** The maximum number and area of all wall signs allowed in DX, MX, RX, CX, EX, I and P districts may not exceed the limits established in Table 134-5.6-1 of this article.

B. Supplemental Regulations

1. Wall signs may not cover windows or other building openings.

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Signs in DX, MX, RX, CX, EX, I and P Districts

2. Wall signs may not cover significant architectural building features, such as sculptural elements, cornices, expression lines or similar features.

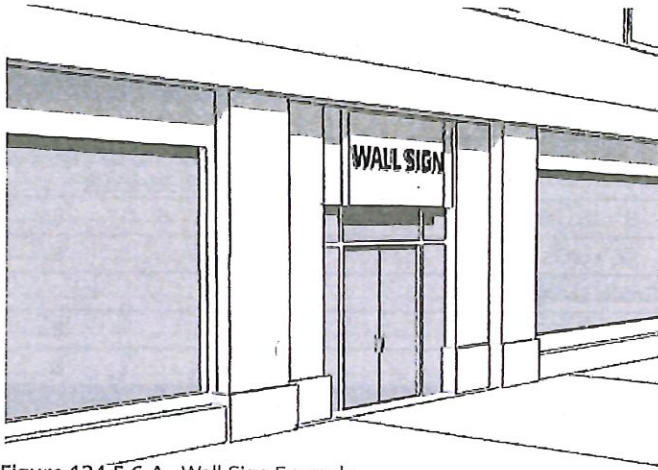


Figure 134-5.6-A. Wall Sign Example

5.6.5 MONUMENT SIGNS

- A. Maximum Number and Area.** The maximum number and area of all monument signs allowed in DX, MX, RX, CX, EX, I and P zoning districts may not exceed the limits established in [Table 134-5.6-1](#) of this article.
- B. Maximum Height.** Monument signs are subject to the following height limits, as measured from grade to the highest point on the sign:
1. If located at or within 25 feet from the front lot line, the sign may not exceed eight feet in height.
 2. If located more than 25 feet from the front lot line, the sign may not exceed 15 feet in height.
- C. Sign Base**
1. The sign base must have a height of at least two feet or 25% of the overall sign height, whichever is greater.
 2. The sign base must be at least as wide as the sign face.
 3. The sign base must be solid and opaque, and constructed of brick, stone, concrete block, or similar permanent, durable material complementing the exterior of the primary building on the lot.



Figure 134-5.6-B. Monument Sign Example

5.6.6 PROJECTING SIGNS

- A. Maximum Number and Area.** The maximum number and area of all projecting signs allowed in DX, MX, RX, CX, EX, I, and P districts may not exceed the limits established in [Table 134-5.6-1](#) of this article.
- B. Supplemental Regulations**
1. In calculating the area of a projecting sign, the area of the largest sign face must be counted twice.
 2. The encroachment of any projecting sign into the public right-of-way is subject to chapter 102 of this code.



Figure 134-5.6-C. Projecting Sign Example

TABLE 134-5.6-1. SIGNS IN DX, MX, RX, CX, EX, I AND P DISTRICTS

	DX1	DX2 DXR	MX1 MX2	MX3	CX	RX	EX I	P
PERMITTED SIGN TYPES								
Wall	●	●	●	●	●	●	●	●
Monument	●	●	●	●	●	●	●	●
Projecting	●	●	●	●	●	●	●	●
Roof	●	●	—	—	●	—	●	—
WALL SIGNS: MAXIMUM NUMBER AND AREA								
Maximum Number per Occupant	2	2	2	2	2	2	2	2
Maximum Total Sign Area (sq. ft.)	2 per linear foot of building frontage for floors 1–3	1.25 per linear foot of building frontage for floors 1–3					2 per linear foot of building frontage for floors 1–3	
Maximum Area of Any Single Sign	200 sq. ft.	100 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.	100 sq. ft.	200 sq. ft.	200 sq. ft.
Other Regulations	See section 134-5.6.3 of this article							
MONUMENT SIGNS: MAXIMUM NUMBER, AREA AND HEIGHT								
Maximum Number per Street Frontage	1	1	1	1	1 per 250 linear feet of frontage	1	1 per 250 linear feet of frontage	1
Maximum Sign Area (sq. ft.)	25	25	1 per linear foot of street frontage or 75 sq. ft., whichever is less	75	1 per linear foot of street frontage or 200 sq. ft., whichever is less	15	1 per linear foot of street frontage or 200 sq. ft., whichever is less	75
Maximum Height (ft.)	8 if setback less than 25 feet from property line; 15 if setback at least 25 feet from property line							
PROJECTING SIGNS								
Maximum Number	May be used in lieu of wall signs or in addition to wall signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.							
Maximum Sign Area	Same as apply to wall signs							
Maximum Projection	May not project more than seven feet from the wall of the building to which they are attached.							
Minimum Vertical Clearance	Must be mounted to provide at least nine feet vertical clearance above the sidewalk, driveway or other ground surface beneath the sign							
Other Regulations	See section 134-5.6.6 of this article							
AWNING AND CANOPY SIGNS								
Regulations	See section 134-5.6.7 of this article							
ROOF SIGNS								
Maximum Number	May be used in lieu of wall signs or in addition to wall signs in those districts that expressly allow roof signs, but the total number of wall signs, projecting signs and roof signs may not exceed the maximum number of wall signs allowed in accordance with this table.							
Maximum Sign Area	Same as apply to wall signs							
Maximum Height	Mounted height of a roof sign may not exceed eight feet. The combined height of a roof sign and the building upon which the sign is mounted may not exceed the maximum height limit of the subject zoning district or the subject building type.							
Other Regulations	See section 134-5.6.8 of this article							
ELECTRONIC AND MULTI-VISION DISPLAYS ON MONUMENT SIGNS								
Regulations	See section 134-5.7 of this article							

Table Notes: ● = Permitted, subject to compliance with all applicable regulations of this article | — = Prohibited

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Electronic and Multi-Vision Displays

5.6.7 AWNING AND CANOPY SIGNS

- A.** Non-illuminated awnings or canopies with no more than six square feet of sign area on awning or canopy may be used in addition to wall signs. Other awning signs or canopy signs may be substituted for allowed wall signs, provided that the total combined number of wall signs, projecting signs, awning signs and canopy signs may not exceed the maximum number of wall signs allowed in accordance with Table 134-5.6-1 of this article.
- B.** Awning and canopy signs that encroach into the public right-of-way are subject to chapter 102 of this code.

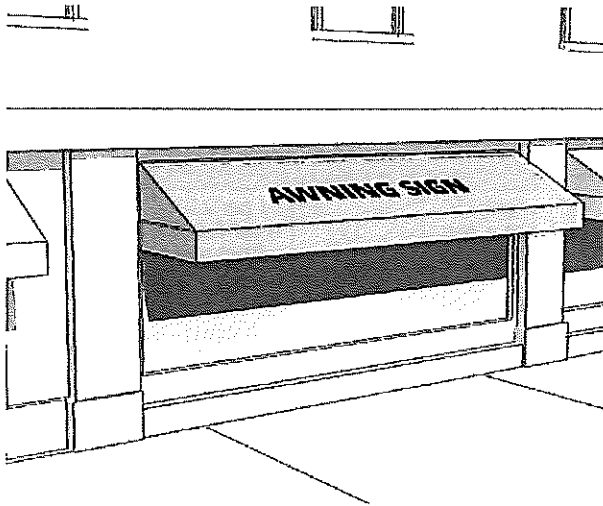


Figure 134-5.6-D. Awning Sign Example

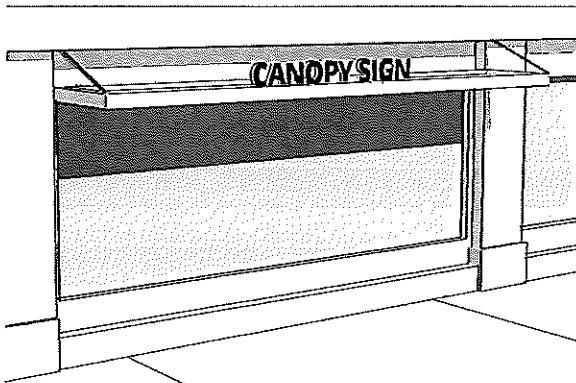


Figure 134-5.6-E. Canopy Sign Example

5.6.8 ROOF SIGNS

- A. Maximum Number, Area and Height.** The maximum number, area and height of all roof signs allowed in DX, MX, RX, CX, EX, I and P districts may

not exceed the limits established in Table 134-5.6-1 of this article.

B. Supplemental Regulations

1. The non-display side back of roof signs must be effectively shielded from view by the building wall, by backing the sign against another sign face, or by painting the exposed back of the sign a color that generally matches the color of the building or roof.
2. Roof signs may not cover windows or other building openings.
3. Roof signs may not cover significant architectural building features, such as sculptural elements, cornices, expression lines or similar features.



Figure 134-5.6-F. Roof Sign Example

134-5.7 Electronic and Multi-Vision Displays

5.7.1 APPLICABILITY

The regulations of this section apply to all electronic displays and multi-vision displays.

5.7.2 SIGN TYPES

Any sign utilizing an electronic display or multi-vision display is limited to the following sign types:

- A.** A monument sign where no more than 24 square feet of the allowed sign area shall be utilized for the electronic or multi-vision display.
- B.** A general advertising sign where permitted by this chapter.

5.7.3 DISPLAY TYPE

Signs may not display full-motion video or otherwise use multiple pictures or graphics in a series of frames to give the illusion of motion or video unless such sign

is located on a lot occupied by an events center and the sign has been approved in accordance with the Type 2 zoning exception procedures. This provision is intended to prohibit television screens, plasma screens, LED screens, holographic displays and other technology used to display video images.

5.7.4 DWELL TIME

The images and messages displayed on electronic displays and multi-vision displays must have a minimum dwell time of at least eight seconds before changing to the next image or message. This dwell time regulation supersedes any more restrictive regulation applicable to a previously approved electronic display or multi-vision display.

5.7.5 TRANSITION

The transition or change from one message to another must be instantaneous and involve no animation or special effects.

5.7.6 ILLUMINATION

- A. The brightness of any electronic display or multi-vision display may not exceed a maximum illumination of 5,000 candelas per square meter (nits) during daylight hours and a maximum illumination of 250 candelas per square meter (nits) between dusk and dawn, as measured from the brightest element on the sign's face.
- B. Electronic displays must be equipped with a light detector or photocell that automatically adjusts the display's brightness according to natural ambient light conditions.

5.7.7 SEPARATION FROM RESIDENTIAL

- A. Monument signs with electronic displays and multi-vision displays are prohibited within 100 feet of:
 1. Any lot in an N or NX district that is used for residential purposes or is vacant, or
 2. Any lot in a non-N or non-NX district that is occupied by a one-household or two-household use.
 3. These separation distance requirements do not apply for monument signs on lots in a P district that are separated from an N or NX district by a public right-of-way.
- B. General advertising signs with electronic displays and multi-vision displays are prohibited within 200 feet of:
 1. Any lot in an N or NX district that is used for residential purposes or is vacant, or

2. Any lot in a non-N or non-NX district that is occupied by a one-household or two-household use.
- C. These separation distance requirements do not apply if the electronic or multi-vision display is not visible from the referenced district, area or lot.
- D. Required separation distances must be measured horizontally in a straight line from the nearest point on a sign face to the nearest point of the protected district or lot.

5.7.8 LEGACY PROVISIONS

- A. In lieu of compliance with the regulations of sections 134-5.7.3 of this article, 134-5.7.4 of this article, and 134-5.7.5 of this article, electronic displays under 24 square feet in area that were in place before June 1, 2014, under authority of a sign permit are subject to the following regulations until June 1, 2024 or such earlier date as the electronic components of the display are replaced, after which date said signs are prohibited. This provision does not prevent the replacement of the sign's individual components as part of normal maintenance of the sign when such replacement cost does not exceed 50% of the value of the original sign.
- B. No such sign may display multiple pictures or images in a series of frames so as to give the illusion of motion or video, except that:
 1. Such signs may be used to display a series of images consisting of pictures, graphics, text or a combination thereof, provided that the entire display is static for at least two seconds between changes of image, and the change of images is instantaneous.
 2. Such signs may be used to display text that scrolls in one direction, either vertically or horizontally, at a rate that is legible to the average person. Any change in the direction of scrolling must be separated by an intervening display of a static image for at least two seconds. The scrolling text can be combined with a background image that is static for at least two seconds between changes, and instantaneously changes between images.

5.7.9 FUTURE AMENDMENTS

The city reserves the right to amend the regulations that apply to electronic displays and multi-vision displays for which a permit was issued after June 1, 2014, regardless of size. Issuance of a permit for an electronic sign or multi-vision display shall not be construed as establishing a right for continued operation of the sign in accor-

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dance with the regulations then in effect. No permit may be issued for a new electronic sign or multi-vision display without a written acknowledgment by the owner or tenant of the premises that they have received notice that the future use of the sign is subject to all applicable regulations, as amended from time to time.

134-5.8 General Advertising Signs

General advertising signs shall be permitted only in those zoning districts where general advertising signs are specifically classified as permitted uses by applicable district regulations pursuant to article 3 of this chapter; only on lots with frontage along a major commercial corridor identified in section 134-5.8.8 of this article; and subject to section 134-5.8.9 of this article. For the purposes of this chapter, general advertising signs may be allowed and regulated as a second primary use on a lot. In each zoning district where general advertising signs are classified as a permitted use, general advertising signs shall be subject to the following regulations, in addition to section 134-5.7 of this article and section 134-7.3 of this chapter for those signs that have an electronic or multi-vision display.

5.8.1 SIZE LIMITATION

The size of any general advertising sign shall be no less than 300 square feet and no more than 672 square feet.

5.8.2 HEIGHT LIMITATION

The height of any general advertising sign shall not exceed 45 feet.

5.8.3 SETBACKS

General advertising signs shall be located no less than 25 feet from the front lot line.

5.8.4 SIGN FACES

General advertising sign may contain separate side-by-side, back-to-back, or V-type sign faces, provided all sign faces are attached to a single supporting structure and all new sign faces are subject to credit requirements pursuant to section 134-5.8.9 of this article.

5.8.5 ROOF-MOUNTED SIGNS

General advertising signs shall not be roof-mounted.

5.8.6 SEPARATION FROM RESIDENTIAL, CIVIC AND HISTORIC USES

A. No general advertising sign shall be permitted within 200 feet of any:

1. Lot in any residential district which either is used for residential purposes or is vacant, or
2. Portion of a PUD district devoted to single- or two-household use.

B. No general advertising sign shall be permitted within 500 feet of any:

1. Lot on which is located a public square, public park or recreation area, school, place of worship, funeral or mortuary service, cemetery, or public library, or
2. Lot which is part of a designated city landmark or historic district or a National Register historic district.

C. Required separation distances must be measured horizontally in a straight line from the nearest point on a sign face to the nearest point of the protected district or lot.

5.8.7 SEPARATION BETWEEN SIGNS

No general advertising signs shall be located within 1,000 feet of any other general advertising sign. Required separation distances must be measured horizontally in a straight line from the nearest point on a sign face to the nearest point of the sign face of any other general advertising sign.

5.8.8 GENERAL ADVERTISING SIGNS ON MAJOR COMMERCIAL CORRIDORS

General advertising signs may only be located on the following designated major commercial corridors:

- A. Euclid Avenue from East 14th Street to Interstate 235.
- B. Interstate 235 (west side) from extension of Tiffin Avenue to north city limits.
- C. East Martin Luther King, Jr. Parkway from Southeast 15th Street to Southeast 24th Street, and from Southeast 30th Street to east city limits. For that portion of East Martin Luther King Jr. Parkway not yet constructed, the zoning enforcement officer shall obtain, review and reasonably utilize the available data from the state department of transportation, the city engineering department and from any other reliable source in determining the location of the future right-of-way.
- D. Southeast 14th Street from Pleasantview Drive to Bloomfield Road.
- E. Army Post Road (south side) from Southwest 9th Street to Southwest 2nd Street, and from Southeast 6th Street to and including the 2100 block of Army Post Road.

- F. 63rd Street/ Iowa Highway 28 from Watrous Avenue to Army Post Road.
- G. Park Avenue from Southwest 46th Street to Southwest 63rd Street.
- H. Northeast 14th Street from Douglas Avenue to north city limits.

5.8.9 USE OF EARNED CREDITS FOR NEW GENERAL ADVERTISING SIGN FACE CONSTRUCTION

An applicant for a permit to construct a new general advertising sign on a lot with frontage on a major commercial corridor shall relinquish credits that have been previously earned pursuant to section 134-7.3.4 of this chapter, which earned credits shall be used in the amounts set forth in Table 134-5.8-1 of this article for each new sign face.

TABLE 134-5.8-1. USE OF EARNED CREDITS FOR NEW GENERAL ADVERTISING SIGN FACE

Type and Area of New Sign Face	Credits to be Relinquished for New Sign Face
A static display sign face at least 300 square feet and less than 450 square feet	1.0 credit
A static display sign face at least 450 square feet and less than or equal to 672 square feet	2.0 credits
A digital or multi-vision display sign face at least 300 square feet and less than 450 square feet	2.0 credits
A digital or multi-vision display sign face at least 450 square feet and less than 672 square feet	4.0 credits

134-5.9 Sign-Related Measurements

5.9.1 SIGN AREA

A. Signs Enclosed in Frames or Cabinets

The area of a sign enclosed in a frame, box or cabinet is determined based on the outer dimensions of the frame or cabinet surrounding the sign face pursuant to Figure 134-5.9-A.

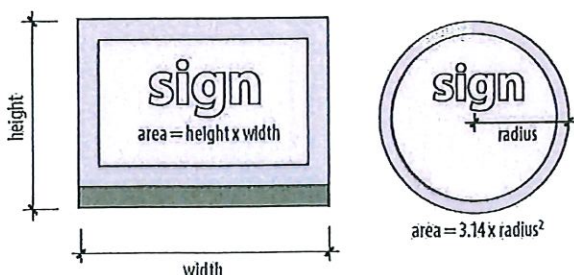


Figure 134-5.9-A. Area of Sign Enclosed in Frame or Cabinet

B. Multi-Sided Signs

Unless otherwise expressly stated, when the sign faces of a multi-sided sign are parallel or within 30 degrees of parallel, only one side is counted for the purpose of determining the area and number of signs. If the sign faces are not parallel or within 30 degrees of parallel, each sign face is counted as a separate sign pursuant to Figure 5.10-C. If the size of one sign face is larger than another, the size of the largest sign face is the area of the sign pursuant to Figure 134-5.9-B.

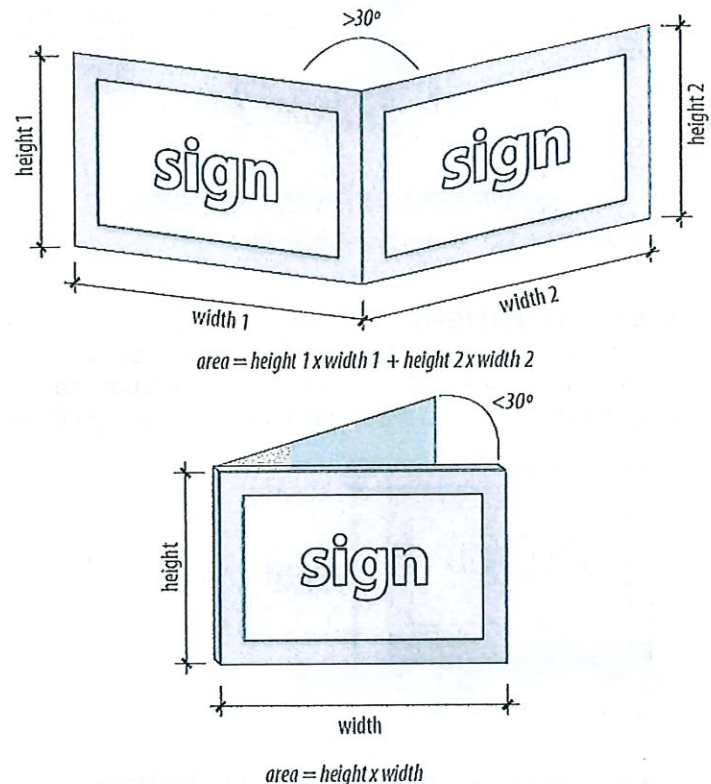


Figure 134-5.9-B. Area of Multi-Sided Sign

C. Channel (Individual) Letter Signs

The area of a sign comprised of individual letters or elements attached directly to a building wall is determined by calculating the area of the smallest rectangle that can be drawn around the letters or elements pursuant to Figure 134-5.9-C.



Figure 134-5.9-C. Area of Channel (Individual) Letter Sign

134-5. SIGNS

Sign-Related Measurements

D. Non-Planar Signs

Spherical, free-form, sculptural or other non-planar sign area is measured as 50% of the sum of the areas using only the four vertical sides of the smallest four-sided rectangle that will encompass the sign structure pursuant to Figure 134-5.9-D. Signs with greater than four rectangle faces are prohibited.

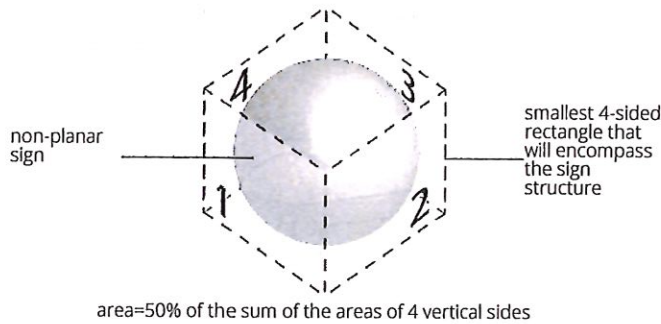


Figure 134-5.9-D. Area of Non-Planar Sign

5.9.2 SIGN HEIGHT

The height of a sign is measured as the vertical distance from ground level to the top of the sign pursuant to Figure 134-5.9-E. The sign height includes the sign base.

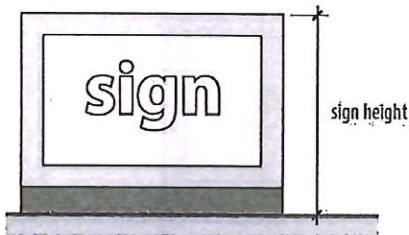


Figure 134-5.9-E. Sign Height

5.9.3 SETBACK, SPACING AND SEPARATION DISTANCES

Unless otherwise expressly stated, required setback, spacing and separation distances between signs must be measured in a straight line from the nearest points on the respective signs or sign structures. Required separation distances between signs and zoning districts, area or lots must be measured in a straight line from the nearest point on the sign structure to the nearest point of the subject district, area or lot.

5.9.4 ILLUMINATION AND LUMINANCE

- A. Foot-Candles.** Sign illumination in foot-candles is measured two feet from the sign face.
- B. Nits.** For the purpose of verifying compliance with maximum brightness level limits expressed in nits (candelas per square meter), brightness levels must

be measured with the dynamic display set to run full white copy with a luminance meter positioned at a location perpendicular to the sign face center. When taking the luminance reading, the sign face must be the only subject visible in the viewfinder.

5.9.5 WINDOW AREA

The area of a window includes only the glass or glazed elements of the window. Frames, mullions and similar features are not counted as part of the window area pursuant to Figure 134-5.9-F.

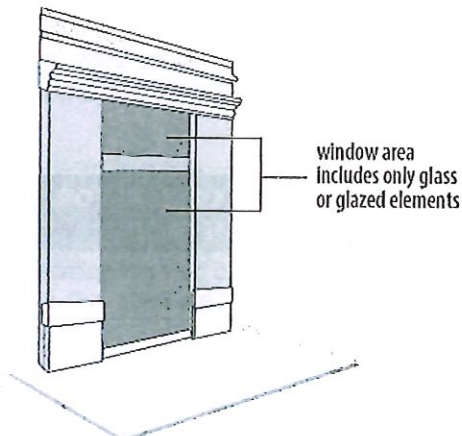


Figure 134-5.9-F. Window Area

Chapter 134. Zoning

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134-6.1 Common Procedural Provisions

6.1.1 APPLICABILITY

The common procedural provisions of this section apply to all of the procedures in this article unless otherwise expressly stated.

6.1.2 REVIEW AND DECISION-MAKING AUTHORITY

Table 134-6.1-1 of this article provides a summary of the review and approval procedures of this article. In the event of conflict between Table 134-6.1-1 of this article and the detailed procedures contained elsewhere in this article, the detailed procedures govern.

TABLE 134-6.1-1. REVIEW AND DECISION-MAKING

Procedure	CDD	BOA	P&Z	CC
Zoning Text/Map Amendment	R	–	R*	DM*
Conditional Use Permit	R	DM*	–	–
Type 1 Zoning Exception	DM	–	–	–
Type 2 Zoning Exception	R	DM*	–	–
Zoning Variance	R	DM*	–	–
Appeal of Administrative Decision	–	DM*	–	–

Table notes:

CDD = community development director

BOA = board of adjustment

P&Z = plan and zoning commission

CC = city council

R = review/recommendation

DM = decision-maker

* = public hearing

6.1.3 PREAPPLICATION MEETINGS

- A. Purpose.** Preapplication meetings provide an early opportunity for staff and applicants to discuss applicable procedures and regulations.
- B. Applicability.** Preapplication meetings are required whenever the provisions of this zoning ordinance expressly state that they are required. They are encouraged in all cases.
- C. Scheduling.** Preapplication meetings must be scheduled with the community development director.
- D. Guidelines.** The community development director is authorized to establish guidelines for preapplication meetings, including information that should be provided and any available alternatives to face-to-face meetings, such as telephone conversations and email correspondence.

6.1.4 APPLICATIONS AND FEES

- A. Owner-initiated Applications.** Whenever the provisions of this zoning ordinance allow the filing of an application, that application must be signed by all record titleholders or contract buyers of record of the real properties that are the subject of the application.
- B. Form of Application.** Applications required under this zoning ordinance must be submitted in a form and in such numbers as required by the community development director. Applications must include materials and information to assist authorized review and decision-making bodies in their consideration of the application, including at least the following:
 1. A list of the names, email addresses and street addresses of all titleholders and contract purchasers of record of the property that is the subject of the application; and
 2. Maps, plats, surveys, dimensioned site plans, engineering documents, environmental reports, traffic studies, and other materials and information, as required by this zoning ordinance or application checklists established by the official responsible for accepting the application. Application forms and submittal requirements must be made available to the general public.
- C. Application Filing Fees and Notification Costs.** Applications must be accompanied by fees in the amounts established in the schedule of fees approved by city council resolution. Actions initiated by the city council do not require payment of a fee. Applications filed by the state or federal government are exempt from application filing fees, but not from the requirement to pay notification fees.
- D. Application Completeness, Accuracy and Sufficiency**
 1. An application will be considered complete and ready for processing only if it is submitted in the required number and form, is accompanied by all required information, including a traffic study if such a study is required in accordance with the city's Traffic Analysis Policy, and is accompanied by the required application filing and notification fees.
 2. If an application is determined to be incomplete, the official responsible for accepting the application must provide notice to the applicant along with an explanation of the application's deficiencies. Notice of an incomplete application

Common Procedural Provisions

may be provided by electronic mail or regular mail.

3. No further processing of incomplete applications will occur and incomplete applications will be pulled from the processing cycle. When the community development director determines that the deficiencies have been corrected, the application will be placed in the first available processing cycle.
4. Applications deemed complete will be considered to be in the processing cycle and will be reviewed by staff and other review and decision-making bodies in accordance with applicable review and approval procedures of this zoning ordinance.
5. The community development director is authorized to require that applications or plans be revised before being placed on an agenda for possible action if the community development director determines that:
 - a. The application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with zoning ordinance requirements or other regulations;
 - b. The application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's or application's compliance with zoning ordinance requirements or other regulations; or
 - c. The decision-making body does not have legal authority to approve the application as it was submitted.

6.1.5 APPLICATION PROCESSING CYCLES

The community development director is authorized to promulgate reasonable cycles and timelines for processing applications, including deadlines for receipt of complete applications.

6.1.6 NEIGHBOR COMMUNICATIONS

A. Purpose. Neighbor communication requirements are intended to ensure that applicants make a good faith effort to:

1. Educate applicants and neighbors about one another's interests;
2. Resolve issues in a manner that respects those interests; and

3. Identify unresolved issues before initiation of public hearings.

B. Applicability. Neighbor communications activities are required whenever the provisions of this zoning ordinance expressly state that they are required. They are encouraged in all cases.

C. Neighbor Meetings Summary. When neighbor meetings are required, applicants must submit a summary of their neighbor meetings at least three days prior to the first required public hearing. Neighbor meetings summaries must include at least the following information:

1. Efforts to notify neighbors about the proposal, including how and when notification occurred, who was notified, and when and where the public meeting was held;
2. Who was involved in the discussions;
3. Suggestions and concerns raised by neighbors; and
4. What specific changes, if any, were considered or made as a result of the neighbor meetings.

6.1.7 REQUIRED PUBLIC HEARING NOTICES

A. Newspaper Notice

1. Whenever the procedures of this article require that newspaper notice be provided, the notice must be published in a newspaper of general circulation within the city of Des Moines that is published at least weekly.
2. The newspaper notice must be published at least once, at least seven days and no more than 20 days before the date of the public hearing. Following publication of the notice, the public hearing may not be held earlier than the next regularly scheduled meeting date of the review or decision-making body holding the hearing.

6.1.8 COURTESY PUBLIC HEARING NOTICES

A. General. Courtesy notice of public hearings and notices of proposed actions under this zoning ordinance are not required by law, but are routinely provided by the city or required of applicants as a way of increasing public awareness, transparency and participation in planning and development matters. Failure by the city to provide any courtesy notice does not invalidate proceedings.

B. Mailed Notice. Whenever the procedures of this article call for the provision of courtesy mailed notices, the notices must be sent by United States Postal Service regular mail. Addresses must be

based on property ownership information from the county assessor's office.

6.1.9 HEARING PROCEDURES

- A.** At required public hearings, interested persons must be permitted to submit information and comments, verbally or in writing. The hearing body is authorized to establish reasonable rules and regulations governing the conduct of hearings and the presentation of information and comments.
- B.** A public hearing may be continued by the hearing body. No re-notification is required if the continuance is set for specified date and time and that date and time is determined at the time of the continuance.
- C.** If a public hearing is continued or postponed for an indefinite period of time from the date of the originally scheduled public hearing, new public hearing notice must be given before the rescheduled public hearing. The applicant must pay all costs of re-notification.

6.1.10 ACTION BY REVIEW AND DECISION-MAKING BODIES

- A.** Review and decision-making bodies may take any action that is consistent with:
 - 1. The regulations of this zoning ordinance; and
 - 2. Any rules or by-laws that apply to the review or decision-making body.
- B.** Review and decision-making bodies are authorized to continue a public hearing or defer action in order to receive additional information or further deliberate.
- C.** When the procedures of this article authorize approval with conditions, review bodies, including staff, are authorized to recommend conditions and decision-making bodies are authorized to approve the subject application with conditions. Any conditions recommended or approved must be reasonable and imposed to satisfy public needs that are directly caused by the requested change or the proposed use or development.

6.1.11 DECISION-MAKING CRITERIA; BURDEN OF PROOF OR PERSUASION

Applications must address relevant review and decision-making criteria. In all cases, the burden is on the applicant to show that an application or proposal complies with all applicable review or approval criteria.

6.1.12 REQUIRED TIME-FRAMES FOR ACTION

Any time limit specified in this zoning ordinance for any decision or action on behalf of a review or decision-making body may be extended if the applicant agrees to an extension in writing or on the record during the applicable hearing; if a continuance is approved pursuant to section 134-6.1.9 of this article; or if the community development director determines that a delay of one meeting is necessary for completion of review.

6.1.13 EFFECT OF FILING

The filing of a complete application pursuant to this article stays all zoning enforcement proceedings, unless the community development director determines that a stay would cause immediate peril to life or property, in which case the proceedings will not be stayed unless by a restraining order, which may be granted by a district court of record based on due cause shown.

6.1.14 PROHIBITED RELIEF

No relief may be granted by any authorized decision-maker for any of the following:

- A.** Waiver, modification or variation of any of the review and approval procedures of this chapter; or
- B.** Waiver, modification, variation or action to preempt a condition of approval or requirement imposed by an authorized decision-making body; and
- C.** Waiver, modification or variation of any of the definitions set forth in this chapter.

134-6.2 Zoning Ordinance Text Amendments

6.2.1 AUTHORITY TO FILE

Amendments to the text of this zoning ordinance may be initiated only by the city council, community development director or legal department.

6.2.2 STAFF REVIEW AND RECOMMENDATION

The community development director must prepare a report and recommendation on the proposed zoning ordinance text amendment. The report must be transmitted to the plan and zoning commission before its public hearing on the proposed amendment.

6.2.3 REQUIRED NOTICE OF HEARING

Notice of the plan and zoning commission's required public hearing on a zoning ordinance text amendment must be published in accordance with section 134-6.1.7 of this article.

134-6. REVIEW AND APPROVAL PROCEDURES

DRAFT

Zoning Map Amendments

6.2.4 PLAN AND ZONING COMMISSION RECOMMENDATION

The plan and zoning commission must hold a public hearing on the proposed zoning ordinance text amendment. Following the close of the public hearing, the plan and zoning commission must act to recommend that the proposed text amendment be approved, approved with conditions, or denied and transmit its report and recommendations to the city council. Motions to approve, approve with conditions or deny zoning ordinance text amendments may be approved by a simple majority vote of a quorum.

6.2.5 CITY COUNCIL ACTION

Following receipt of the plan and zoning commission's report and recommendation, the city council must hold a public hearing and act to approve the proposed zoning ordinance text amendment, approve the proposed text amendment with conditions or deny the proposed text amendment. Zoning ordinance text amendments may be approved by a majority vote of all members of the city council.

6.2.6 REVIEW AND APPROVAL CRITERIA

The decision to amend the zoning ordinance text is a matter of legislative discretion that is not controlled by any one standard. In making recommendations and decisions about zoning ordinance text amendments, review and decision-making bodies must consider all relevant factors of Iowa Code section 414.3 and the following:

- A. Whether the proposed text amendment is in conformity with the policy and intent of the comprehensive plan; and
- B. Whether the proposed zoning ordinance text amendment corrects an error or inconsistency or is necessary or desirable to meet the challenge of a changed or changing condition and is in the public interest.

134-6.3 Zoning Map Amendments



Figure 134-6.3-A. Zoning Map Amendment Process

6.3.1 AUTHORITY TO FILE

Amendments to the zoning map may be initiated only by the city council, the community development director, or with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property that is the subject of the proposed zoning map amendment.

6.3.2 PREAPPLICATION MEETING

Property owners proposing a zoning map amendment must attend a preapplication meeting before filing the zoning map amendment application per section 134-6.1.3 of this article.

6.3.3 APPLICATION FILING

Property owner-initiated applications for zoning map amendments must be filed with the community development director.

6.3.4 NEIGHBOR COMMUNICATIONS

Applicants for zoning map amendments are responsible for conducting neighbor communications activities and providing a summary of such activities before required public hearings pursuant to section 134-6.1.6 of this article.

6.3.5 STAFF REVIEW AND RECOMMENDATION

Following receipt of a complete zoning map amendment application or initiation of zoning map amendment by the city council, the community development director must prepare a report and recommendation on the proposed zoning map amendment. The report must be transmitted to the plan and zoning commission before its public hearing on the proposed amendment.

6.3.6 NOTICE OF PLAN AND ZONING COMMISSION HEARING

It is the policy of the city to provide courtesy mailed notice to all owners of property included within the area that is the subject of the proposed zoning map amendment and to all owners of property and all recognized neighborhood associations within 250 feet of the subject property. Mailed notice shall not be provided for city-initiated rezonings when such notice would be impractical because of the size of the area affected.

6.3.7 PLAN AND ZONING COMMISSION RECOMMENDATION

A. Following receipt of a complete application for a zoning map amendment or initiation of a zoning map amendment by the community development director or city council, the plan and zoning commission must hold a public hearing on the proposed amendment. Following the close of the public hearing, the plan and zoning commission must act to recommend that the proposed amendment be approved, approved with conditions, or denied.

B. All proposed zoning map amendments must be transmitted to the city council within a reasonable time following action by the plan and zoning commission.

C. Motions to recommend approval, approval with conditions or denial of zoning map amendments may be approved by a simple majority vote.

6.3.8 NOTICE OF CITY COUNCIL HEARING

Notice of the city council's required public hearing on a zoning map amendment must be published in accordance with section 134-6.1.7 of this article.

6.3.9 CITY COUNCIL ACTION

A. Following receipt of the plan and zoning commission's report and recommendation, the city council must hold a public hearing and act to approve the proposed zoning map amendment, approve the proposed zoning map amendment

with conditions, or deny the proposed zoning map amendment.

B. Zoning map amendments may be approved by a majority vote of all members of the city council, except that passage of the zoning map amendment requires a favorable vote of three-fourths of all members of the city council if either of the following occurs:

1. The plan and zoning commission recommends denial of the zoning map amendment; or
2. A valid protest is filed in opposition to the zoning map amendment, in accordance with section 134-6.3.10 of this article.

6.3.10 PROTEST OF ZONING MAP AMENDMENTS

A. A protest opposing a zoning map amendment will be deemed valid if it is signed by any of the following:

1. The owners of 20% or more of the area of the lots included in proposed zoning map amendment area;
2. The owners of 20% or more of the property located within 200 feet of the exterior boundaries of the area included in the proposed zoning map amendment area; or
3. The owners of 15% or more of the property located within 200 feet of the exterior boundaries of the area included in the proposed zoning map amendment area if 30% or more of the area of the lots within 200 feet of the proposed rezoning area is owned by a governmental entity.

B. A protest opposing a zoning map amendment must be filed with the city clerk before or at the city council's hearing to consider the subject zoning map amendment.

6.3.11 REVIEW AND APPROVAL CRITERIA

The decision to amend the zoning map is a matter of city council discretion that is not controlled by any single standard or criterion. In making recommendations and decisions on zoning map amendments, review and decision-making bodies must consider all relevant factors, including at least the following:

- A.** Whether the proposed zoning map amendment is consistent with the policy and intent of comprehensive plan; and
- B.** Whether the proposed zoning map amendment corrects an error or inconsistency or is necessary

134-6. REVIEW AND APPROVAL PROCEDURES

DRAFT

Conditional Uses

or desirable to meet the challenge of a changed or changing condition and is in the public interest.

6.3.12 REVIEW AND APPROVAL - VEHICLE SALES AND RENTAL DISPLAY

- A. There exist within the city of Des Moines segments of commercial corridors wherein the concentration of vehicle sales and rental display lots has reached a level that has discouraged investment and reinvestment in other uses in the area. As retail and service businesses close and property values within the affected corridors decline or fail to rise with the overall market, the most profitable use of the vacant properties is often for additional vehicle sales and rental display lots. This further increases the concentration of vehicle sales and rental display lots and their impact on other properties. The creation or expansion of vehicle sales and rental display lots is generally prohibited on such corridors. It is expected that over time the concentration of vehicle sales and rental display lots will decline through attrition and conversion to other uses, and the detrimental impact of the remaining vehicle sales and rental display lots will decline as vehicle sales and rental display lots are upgraded over time to the current landscaping and setback standards.
- B. Property should not be rezoned to remove the "-V" extension to allow vehicle sales and rental display lots when the city council has made a determination that at least one of the following conditions exist within the corridor along which the property is located:
1. The corridor or portion thereof to be rezoned contains a high concentration of vehicle sales and rental display lots and the concentration of vehicle sales and rental display lots has reached a level where it is discouraging, or with any increase is likely to discourage, further investment and reinvestment in other uses along the corridor.
 2. The use of the required front yard for vehicle sales and rental display is contrary to the predominant character of the corridor or portion thereof to be rezoned, and would detrimentally impact that character and property values along the corridor.

The city council, after review and recommendation by the plan and zoning commission, may consider removal of the "-V" extension designation from a specific parcel, if the council finds that the above conditions no longer exist or that the proposed use

demonstrates provision of exceptional setbacks, landscaping and other site amenities that mitigate the visual impact of the vehicle sales and rental display lot from the corridor.

6.3.13 SUCCESSIVE APPLICATIONS

If a zoning map amendment application has been denied by the city council, no new zoning map amendment application that includes all or part of the same property may be filed or considered by the city council for at least one year from the date of final action by the city council.

134-6.4 Conditional Uses

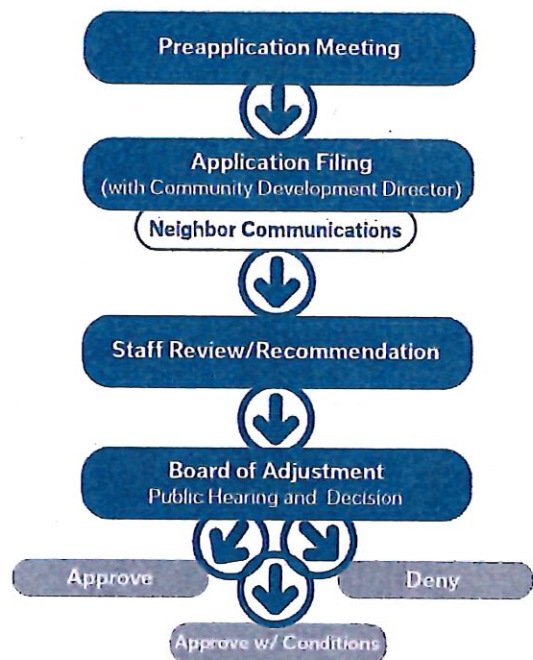


Figure 134-6.4-A. Conditional Use Process

6.4.1 AUTHORITY TO FILE

Conditional use applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the conditional use is proposed.

6.4.2 PREAPPLICATION MEETING

Property owners requesting approval of a conditional use must attend a preapplication meeting before filing the conditional use application pursuant to section 134-6.1.3 of this article.

6.4.3 APPLICATION FILING

Conditional use applications must be filed with the community development director.

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Conditional Uses

6.4.4 NEIGHBOR COMMUNICATIONS

Applicants for conditional uses are responsible for conducting neighborhood meeting(s) and providing a summary of such meeting(s) before required public hearings pursuant to section [134-6.1.6 of this article](#).

6.4.5 STAFF REVIEW AND RECOMMENDATION

Following receipt of a complete conditional use application, the community development director must prepare a report and recommendation. The report and recommendation must be transmitted to the board of adjustment before its public hearing on the proposed conditional use.

6.4.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice of hearing to all owners of property and any applicable recognized neighborhood associations within 250 feet of the property for which a conditional use approval is requested, except as follows;

1. The city will provide courtesy mailed notice of hearing to all owners of property and any applicable recognized neighborhood associations within 300 feet of the property for which a conditional use approval for a wireless telecommunications tower is requested.
2. The city will provide courtesy mailed notice of hearing to all owners of property abutting and diagonally opposite from the subject property and any applicable recognized neighborhood association within the notification area for which a conditional use approval for any wireless telecommunications use, other than related to a tower, is requested.

6.4.7 BOARD OF ADJUSTMENT DECISION

- A. Following receipt of a complete conditional use application, the board of adjustment must hold a public hearing to consider the application. Following the close of the public hearing, the board of adjustment must act to approve the requested conditional use, approve the conditional use with conditions, or deny approval of the conditional use based on the applicable standards and review criteria of section [134-6.4.8 of this article](#). Approval of a conditional use requires an affirmative vote of at least four members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.
- B. In approving a conditional use, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be

necessary to ensure compliance with the standards of section [134-6.4.8 of this article](#), to reduce or minimize the effect of the conditional use upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.4.8 STANDARDS AND REVIEW CRITERIA

A. General

A conditional use may not be approved unless the board of adjustment determines that the proposed use or activity complies with all applicable use-specific regulations and that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location and operation of the use or activity adequately safeguards the health, safety, and general welfare of persons residing or working in adjoining or surrounding property;
2. The proposed use will not impair an adequate supply of light and air to surrounding property;
3. The proposed use will not unduly increase congestion in the streets, or public danger of fire, safety or flooding;
4. The proposed use will not diminish or impair established nearby property values;
5. The proposed use is consistent with the general purpose of this zoning ordinance, the planning and design ordinance, chapter 135 of this code, and the comprehensive plan and any specific purposes established in this zoning ordinance for the subject use;
6. The proposed use in an F zoning district is fully in compliance with chapter 50 of this code;
7. The proposed use shall have no significant detrimental impact on the use and enjoyment of adjoining properties;
8. Adequate setbacks shall be provided to protect adjacent residentially zoned property from non-residential and institutional uses; and
9. No parking should be permitted in a required front yard of an N district unless shown to be compatible with the adjoining land use.

B. Short-Term Rentals

A conditional use may not be approved for a short-term rental unless the board of adjustment determines that the proposed use or activity complies with all applicable short-term rental regulations of subsection [C](#) of section 134-3.5.12 of this chapter and

134-6. REVIEW AND APPROVAL PROCEDURES

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Conditional Uses

that the applicant has demonstrated that all of the following general standards and review criteria are met:

1. The proposed geographic location, design, construction and operation of the particular short-term rental adequately safeguards the health, safety and general welfare of persons in the adjoining or surrounding areas.
2. The short-term rental will not unduly increase congestion on the streets in the adjoining area or displace or impede use of parking spaces required by chapter 135 of this code.
3. The operation of the short-term rental will not constitute a nuisance.
4. The short-term rental meets all required occupancy limits set forth in the International Property Maintenance Code.
5. A conditional use for short-term rental can be reconsidered by the board of adjustment if at any time the zoning enforcement officer determines that the conduct of the short-term rental, by its owner, authorized management agent, renter, or others, has become a nuisance, is detrimental to the neighborhood, or does not comply with one or more conditions established in the prior board of adjustment conditional use approval, in the general requirements for short-term rentals, or the conditions set forth in this section.
6. If the short-term rental of a single-household detached structure, a two-household attached structure or a condominium within a structure, is to be undertaken by a tenant-occupant rather than an owner-occupant, then the application for conditional use requires signed consent by the owner of the applicable structure. If such signed consent is not included, the application for conditional use will not be accepted by city staff or submitted to the board of adjustment for consideration.
7. For all multi-household structures and for two-household attached structures, applications for short-term rental that are deemed complete by community development department staff shall be considered and submitted to the board of adjustment in the order of submittal to the community development department.

6.4.9 FILING AND EFFECT OF DECISIONS

- A. Written decisions of the board of adjustment must be filed promptly following the board's action and

be open to public inspection. Written decisions must describe the action taken, the vote of each board member participating and the reasons for such action.

- B. The board of adjustment's decision on a conditional use becomes final and effective after the board's written decision is signed and filed with the community development department, which serves as the board of adjustment office.

6.4.10 LAPSE OF APPROVAL

- A. All activity authorized by an approved conditional use must be completed within two years of the date of signature and filing of the board's decision, or less time if ordered by board decision or in the event of a temporary use, or the approval lapses and is of no further effect.
- B. If any use of land or structure approved as a conditional use is discontinued for a period of six months or more, the conditional use approval lapses and is of no further effect.
- C. An approved conditional use for a short-term rental shall be in effect only for so long as the subject structure is owned, or controlled through lease, by the applicant.
- D. If any use or structure approved as a conditional use is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved conditional use lapses and is of no further effect.
- E. Once a conditional use approval lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.4.11 AMENDMENTS

A request for revisions to the specific nature of an approved conditional use or to any conditions required for an approved conditional use must be processed as a new conditional use application, including all requirements for fees, notices and public hearings.

6.4.12 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section 134-8.1.2.G of this chapter.

6.4.13 SUCCESSIVE APPLICATIONS

If a conditional use has been denied by the board of adjustment, a new conditional use application seeking

134-6. REVIEW AND APPROVAL PROCEDURES

Type 1 Zoning Exceptions

the same approval may not be considered by the board of adjustment for at least one year from the date of final action by the board of adjustment unless the board finds that the circumstances at the time of the board's previous decision have materially changed so as to effect the reasons that produced and supported that previous decision.

6.4.14 CONDITIONS AND SAFEGUARDS

- A. In granting any conditional use under the terms of this division, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall result in revocation of the conditional use approval.
- B. If the zoning enforcement officer determines at any time that the applicant or property owner or designee exhibits a pattern of violating the conditions set forth in the conditional use approval, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of the property and any other applicable party at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of the property exhibits a pattern of violating the conditions set forth in the board's conditional use approval, the board shall have the authority to amend or revoke the conditional use approval.

134-6.5 Type 1 Zoning Exceptions



Figure 134-6.5-A. Type 1 Zoning Exception Process

6.5.1 INTENT

Type 1 zoning exceptions are intended to provide a streamlined approval procedure for minor modifications of selected zoning ordinance regulations. Type 1 zoning exceptions are further intended to:

- A. Allow development and construction that is in keeping with the general purpose and intent of zoning ordinance regulations and the established character of the area in which the development or construction is located; and
- B. Provide flexibility that will help promote rehabilitation and reuse of existing buildings and new construction when such flexibility will not adversely affect nearby properties or neighborhood character.

6.5.2 AUTHORIZED TYPE 1 ZONING EXCEPTIONS

Unless otherwise allowed by this ordinance, only the following may be approved as Type 1 zoning exceptions:

1. Exceptions to supplemental regulations that apply to household living uses, as set forth in section [134-3.3.1 of this chapter](#), if such exceptions are determined by the city legal department to be required by federal or state law;
2. Exceptions to supplemental regulations that apply to family home uses, as set forth in section [134-3.3.2 of this chapter](#), if such exceptions are

134-6. REVIEW AND APPROVAL PROCEDURES

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Type 1 Zoning Exceptions

determined by the city legal department to be required by federal or state law;

3. Exceptions to supplemental regulations that apply to home and community-based services waiver recipient residence uses, as set forth in section 134-3.3.2 of this chapter, if such exceptions are determined by the city legal department to be required by federal or state law;
4. Exceptions to allow alternative durable materials for a monument sign base;
5. Exceptions to allow less than or equal to 50% variation in height of a monument sign base;
6. Exceptions to allow signs used on a temporary basis in districts A, N, NM, or NX that are greater than four square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 12 square feet in total area for all signs used on a temporary basis on one lot;
7. Exceptions to allow signs used on a temporary basis in all districts other than A, N, NM, or NX that are greater than 32 square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 100 square feet in total area for all signs used on a temporary basis on one lot;
8. Exceptions to allow two to six signs on a temporary basis in all districts other than A, N, NX, and NM districts; and
9. Other exceptions expressly provided in this chapter.

6.5.3 AUTHORITY TO FILE

Type 1 zoning exception applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the Type 1 zoning exception is proposed.

6.5.4 APPLICATION FILING

Complete applications for Type 1 zoning exceptions must be filed with the community development director.

6.5.5 ACTION BY COMMUNITY DEVELOPMENT DIRECTOR

- A. The community development director must act to approve the Type 1 zoning exception application, approve the application with conditions or deny the application based on the approval criteria and standards of section 134-6.5.6 of this article.

- B. If a Type 1 zoning exception is denied or approved with conditions unacceptable to the applicant, the applicant is authorized to seek approval of requested zoning exception from the board of adjustment in accordance with the Type 2 zoning exception procedures of section 134-6.6 of this article.

6.5.6 STANDARDS AND REVIEW CRITERIA

Type 1 zoning exceptions may be approved only when the community development director determines that the following approval standards and criteria and any other specific criteria established in this zoning ordinance for the authorized Type 1 zoning exception have been met:

- A. The requested Type 1 zoning exception is consistent with all relevant purpose and intent statements of this zoning ordinance and with the general purpose and intent of the comprehensive plan;
- B. The requested Type 1 zoning exception will not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare; and
- C. Any adverse impacts resulting from the Type 1 zoning exception will be mitigated to the maximum extent feasible.

6.5.7 CONDITIONS OF APPROVAL

In granting a Type 1 zoning exception, the community development director is authorized to impose conditions upon the subject property that are necessary to reduce or minimize any potentially adverse impacts on other property in the surrounding area, and to carry out the stated purpose and intent of this zoning ordinance.

6.5.8 LAPSE OF APPROVAL

- A. All activity authorized by an approved Type 1 zoning exception must be completed within two years of the community development director's action or the approval lapses and is of no further effect.
- B. If any use of land or structure approved as a Type 1 zoning exception is discontinued for a period of one year or more, the approved Type 1 zoning exception lapses and is of no further effect.
- C. If any use or structure approved as a Type 1 zoning exception is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved zoning exception lapses and is of no further effect.

D. Once a Type 1 zoning exception lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.5.9 TRANSFERABILITY

Approved Type 1 zoning exceptions run with the land and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

6.5.10 AMENDMENTS

A request for changes in the specific nature of an approved Type 1 zoning exception or changes to any conditions attached to an approved Type 1 zoning exception must be processed as a new Type 1 zoning exception application, including all requirements for fees.

134-6.6 Type 2 Zoning Exceptions

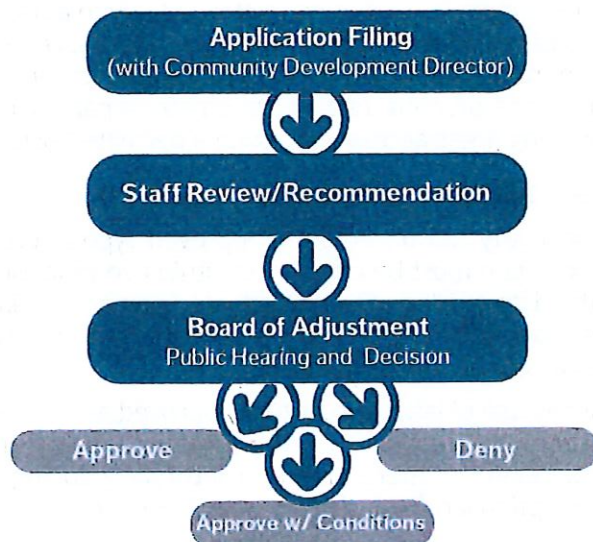


Figure 134-6.6-A. Type 2 Zoning Exception Process

6.6.1 INTENT

Type 2 zoning exceptions are intended to provide a procedure for the board of adjustment to use in considering requests for regulatory relief from certain specified zoning regulations when such relief is reasonably needed to overcome practical difficulties related to the subject property.

6.6.2 AUTHORIZED TYPE 2 ZONING EXCEPTIONS

Unless otherwise allowed by this ordinance, only the following may be approved as Type 2 zoning exceptions:

1. Exceptions to any numerical regulation established in this chapter, when the exception does not exceed 50% of the applicable numerical regulation, other than separation distance requirements, and other than use requirements set forth in section 134-3.8 of this chapter.
2. Exceptions to the time period within which a use may be resumed after a temporary discontinuance of that use, when:
 - a. Discontinuance of the use was due to unique circumstances not of the property owner's own making; and
 - b. Resumption of the use will not have a significant adverse impact on the essential character of the surrounding area.
3. Exceptions to allow a pole sign when the board of adjustment determines that there is no feasible location for the placement of a monument sign that is outside of the vision clearance triangle required by section 114-14 of this code and the proposed sign does not obstruct the vision of drivers entering or exiting the subject or adjoining properties.
4. Exceptions to allow signs on a temporary basis in districts A, N, NM, or NX may be requested for approval of signs used on a temporary basis exceeding 12 square feet in total area for all signs used on a temporary basis on one lot.
5. Exceptions to allow signs used on a temporary basis in all districts other than A, N, NM, or NX exceeding 100 square feet total area for all signs used on a temporary basis on one lot.
6. Exceptions to allow a sign with full-motion video display for an events center.
7. Exceptions to allow seven or more signs on a temporary basis in all districts other than A, N, NX, and NM districts.
8. Other exceptions expressly provided in this chapter.

6.6.3 AUTHORITY TO FILE

Type 2 zoning exception applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the Type 2 zoning exception is proposed.

6.6.4 APPLICATION FILING

Complete applications for Type 2 zoning exceptions must be filed with the community development

Type 2 Zoning Exceptions

director.

6.6.5 STAFF REVIEW AND RECOMMENDATION

Following receipt of a complete application, the community development director must prepare a report on the requested Type 2 zoning exception. The report must be transmitted to the board of adjustment before the required public hearing.

6.6.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice of hearing to all owners of property abutting and diagonally opposite from the subject property and any applicable recognized neighborhood association within the notification area for which the Type 2 zoning exception is requested.

6.6.7 BOARD OF ADJUSTMENT DECISION

- A.** Following receipt of a complete application for a Type 2 zoning exception, the board of adjustment must hold a public hearing to consider the matter. Following the close of the public hearing, the board of adjustment must act to approve the requested Type 2 zoning exception with conditions, or deny the Type 2 zoning exception based on the applicable standards and review criteria of section 134-6.6.8 of this article. Approval of a Type 2 zoning exception requires an affirmative vote of at least four members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.
- B.** In approving a Type 2 zoning exception, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards of section 134-6.6.8 of this article, to reduce or minimize the effect of the Type 2 zoning exception upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.6.8 STANDARDS AND REVIEW CRITERIA

Type 2 zoning exceptions may be approved only when the board of adjustment determines that all of the following general approval standards and criteria and any other specific criteria established in this zoning ordinance for the authorized Type 2 zoning exception have been met:

- A.** The requested exception is reasonably necessary due to practical difficulties related to the subject property;

- B.** The practical difficulties related to the subject property cannot be overcome by any feasible alternative means other than an exception;
- C.** The requested exception will not have a significant adverse impact on the essential character of the surrounding area;
- D.** The requested exception by its design, construction and operation:
1. Will adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property;
 2. Will not impair an adequate supply of light and air to adjacent property;
 3. Will not unduly increase congestion in the public streets;
 4. Will not increase public danger of fire and safety; and
 5. Will not diminish or impair established property values in the surrounding area.
- E.** The requested exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.

6.6.9 LAPSE OF APPROVAL

- A.** All activity authorized by an approved Type 2 zoning exception must be completed within two years of the date of filing of the board's decision or less time if ordered by board decision, or the approval lapses and is of no further effect.
- B.** If any use of land or structure approved as a Type 2 zoning exception is discontinued for a period of six months or more, the approved Type 2 zoning exception lapses and is of no further effect.
- C.** If any use or structure approved as a Type 2 zoning exception is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade, to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved Type 2 zoning exception lapses and is of no further effect.
- D.** Once a Type 2 zoning exception lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.6.10 TRANSFERABILITY

Approved Type 2 zoning exceptions run with the land

and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

6.6.11 AMENDMENTS

A request for changes in the specific nature of an approved Type 2 zoning exception or changes to any conditions attached to an approved Type 2 zoning exception must be processed as a new Type 2 zoning exception application, including all requirements for fees, notices and public hearings.

6.6.12 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section 134-8.1.2.G of this chapter.

6.6.13 SUCCESSIVE APPLICATIONS

If a Type 2 zoning exception application has been denied by the board of adjustment, a new Type 2 zoning exception application seeking the same relief may not be considered by the board of adjustment for at least one year from the date of final action by the board of adjustment unless the board finds that the facts and circumstances present at the time of the board's prior decision have materially changed so as to effect the reasons that produced and supported that prior decision.

134-6.7 Zoning Variances

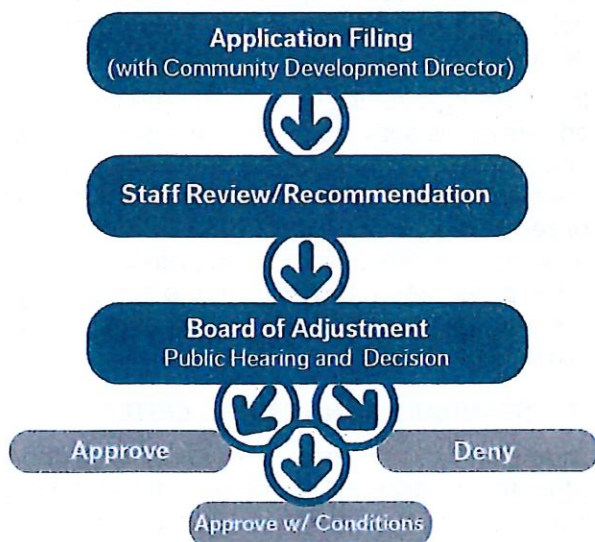


Figure 134-6.7-A. Zoning (Non-Use) Variance Process



Figure 134-6.7-B. Zoning (Use) Variance Process

134-6. REVIEW AND APPROVAL PROCEDURES

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Zoning Variances



Figure 134-6.7-C. Zoning (Separation Distances) Variance Process

6.7.1 INTENT

A zoning variance is a grant of relief to a property owner from strict compliance with the regulations of this chapter. The intent of a zoning variance is not to simply remove an inconvenience or financial burden, but rather to alleviate an unnecessary hardship that would result if strict compliance with one or more zoning regulations was required.

6.7.2 AUTHORITY TO FILE

Zoning variance applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the zoning variance is proposed.

6.7.3 APPLICATION FILING

- A. Complete applications for zoning variances must be filed with the community development director.
- B. An application for a zoning use variance may not be filed or accepted for processing unless a proposed amendment to rezone the subject property to a district that would allow the subject use has been

considered and denied by the city council within the preceding 12 months, except this requirement does not apply to requests to vary use separation requirements.

6.7.4 STAFF REVIEW AND RECOMMENDATION

Following receipt of a complete application, the community development director must prepare a report and recommendation on the requested zoning variance. The report and recommendation must be transmitted to the board of adjustment before the required public hearing.

6.7.5 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice of hearing to all owners of property and any applicable recognized neighborhood associations within 250 feet of the property for which the zoning variance is requested.

6.7.6 BOARD OF ADJUSTMENT DECISION

- A. Following receipt of a complete zoning variance application, the board of adjustment must hold a public hearing to consider the requested zoning variance. Following the close of the public hearing, the board of adjustment must act to approve the requested zoning variance, approve the zoning variance with conditions, or deny the zoning variance request based on the applicable standards and review criteria of section 134-6.7.7 of this article. Approval of a zoning variance requires an affirmative vote of at least four members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.
- B. In approving a zoning variance, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards of section 134-6.7.7 of this article, to reduce or minimize the effect of the zoning variance upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.7.7 STANDARDS AND REVIEW CRITERIA

- A. **General.** A zoning variance may only be approved when the variance will not be contrary to the public interest, and where owing to special conditions a literal enforcement of the regulations of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. A zoning variance further may not be approved unless the board of

adjustment determines that all of the following facts have been established by the applicant:

1. The subject property cannot yield a reasonable return from any use permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to maintain a more profitable use;
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the subject property and not to general conditions in the neighborhood; and
3. The use or construction to be authorized by the zoning variance will not alter the essential character of the area in which the subject property is located.

B. Floodplain Variances. No zoning variance from the F zoning district regulations may be approved unless the board of adjustment determines that the general zoning variance standards and review criteria of paragraph A of this section have been met and that all of the following additional following facts have been established by the owner of the subject property:

1. Zoning variances from the F zoning district regulations may only be granted upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that the zoning variance is the minimum necessary, considering the flood hazard, to afford relief;
 - c. A showing that the Iowa Department of Natural Resources and the city engineer has been notified of the requested zoning variance and offers no objection; and
 - d. A showing that the proposed variance does not impede emergency access to the subject property or surrounding neighborhood.

6.7.8 FILING AND EFFECT OF DECISIONS

A. Written decisions of the board of adjustment must be filed promptly following the board's action and be open to public inspection. Written decisions must describe the action taken, the vote of each board member participating and the reasons for such action.

B. Except as expressly stated in paragraph C of this section 134-6.7.8 of this article, the board of adjustment's decision on a zoning variance becomes final and effective after the board's written decision is filed in the board office.

C. A decision of the board of adjustment to grant a zoning use variance or variance from any separation distance requirement must be referred to the city council for review. The city council must then review the board of adjustment's decision within 30 days after the decision is signed and filed. Following the city council's review, the council may remand the decision to the board of adjustment for further study. If the city council does not act to review the decision within 30 days after it is signed and filed, the board of adjustment's decision becomes effective on the 31st day. If the city council declines to remand a decision, the board of adjustment's decision becomes final and effective on the date of the council's action to decline remand. If the city council remands a decision to the board of adjustment, the effective date of the board's decision is delayed for 30 days from the date of city council remand.

D. Upon remand of a decision from the city council, the board of adjustment must conduct a rehearing on the matter for further study and action at a regularly scheduled or special-called board meeting held during the 30-day delay period. Following the close of the rehearing, the board of adjustment must act to either affirm its initial decision on the zoning use variance or variance from any separation distance requirement or withdraw its initial decision and issue a new decision on the applicable variance. Upon completion of the rehearing process, the board of adjustment's decision is not subject to review by the city council and becomes final and effective upon filing.

6.7.9 LAPSE OF APPROVAL

A. All activity authorized by an approved zoning variance must be completed within two years of the date of filing of the board's decision, or less time if ordered by board decision, or the approval lapses and is of no further effect.

B. If any use of land or structure approved as a zoning variance is discontinued for a period of one year or more, the approved zoning variance lapses and is of no further effect.

C. If any use or structure approved as a zoning variance is damaged or destroyed by any means, including damage or destruction by repair,

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Requests for Reasonable Accommodation

alteration, replacement or upgrade to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved zoning variance lapses and is of no further effect.

- D. Once a zoning variance lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

6.7.10 TRANSFERABILITY

Approved zoning variances run with the land and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

6.7.11 AMENDMENTS

A request for changes in the specific nature of an approved zoning variance or revisions to any conditions attached to an approved zoning variance must be processed as a new zoning variance application, including all requirements for fees, notices and public hearings.

6.7.12 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section 134-8.1.2.G of this chapter.

6.7.13 SUCCESSIVE APPLICATIONS

If a zoning variance request has been denied by the board of adjustment, a new zoning variance request seeking the same relief may not be considered by the board of adjustment for at least two years from the date of final action by the board of adjustment unless the board first finds that conditions have changed. A change in conditions present at the time of the board's prior decision may be such as:

- A. When the appellant or applicant proves the consent of owners who previously objected to the relief sought at the earlier hearing;
- B. When the appellant or applicant proves that land adjacent to the subject property is no longer subject to restrictive covenants that were in effect at the time of the earlier hearing;
- C. When the appellant or applicant presents a new plan that involves substantially greater limitations on the use of the property; and
- D. When the appellant or applicant presents evidence showing that the vicinity of the proposed variance has undergone a material and substantial change since the earlier decision was rendered.

6.7.14 RECONSIDERATION OF USE VARIANCE

If the zoning enforcement officer determines at any time that the operation of the property exhibits a pattern of violating the conditions set forth in the use variance, the zoning enforcement officer may apply to the board to reconsider the issuance of the use variance for such property. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such property and any other applicable party at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such property exhibits a pattern of violating the conditions set forth in the use variance, the board shall have the authority to amend or revoke the use variance.

134-6.8 Requests for Reasonable Accommodation

See chapter 2, article VII of this code.

134-6.9 Appeals of Administrative Decisions

6.9.1 AUTHORITY

Except as otherwise expressly stated in this zoning ordinance, the board of adjustment is authorized to hear and decide all appeals where it is alleged there has been an error in any written order, decision or determination made by the community development director or any other administrative official in the administration, interpretation or enforcement of this zoning ordinance.

6.9.2 RIGHT TO APPEAL

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning enforcement officer or of any other administrative officer in the enforcement of this chapter or of the state zoning laws.

6.9.3 APPLICATION FILING

- A. Complete applications for appeals of administrative decisions must be filed with the community development director including payment of the application fee as provided in the schedule of fees approved by city council resolution.
- B. Appeals of written administrative decisions must be filed within 10 days of the date of the decision.

6.9.4 EFFECT OF FILING

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed from, unless the community development director certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in the director's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the community development director and on due cause shown.

6.9.5 RECORD ON APPEAL

At or before the board of adjustment's hearing, the community development director or other administrative official whose decision is being appealed must transmit to the board of adjustment all papers constituting the record related to the decision being appealed.

6.9.6 NOTICE OF HEARING

It is the policy of the city to provide courtesy mailed notice of the date and time of the hearing on appeal to the subject property owner and to all owners of property and recognized neighborhood associations within 250 feet of the subject property.

6.9.7 HEARING AND FINAL DECISION

- A. The board of adjustment shall fix a reasonable time for public hearing on the appeal and shall decide the appeal within a reasonable time.
- B. At the hearing, any party may appear in person or by agent or by attorney.
- C. In exercising the appeal power, the board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the community development director from whom the appeal is taken. The concurring vote of four of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the zoning enforcement officer or of any other administrative officer.
- D. The decision of the board of adjustment shall be in writing and filed promptly following the board's action and open to public inspection. The decision shall describe the action taken, the vote of each board member participating, and the reasons for

such action. The board of adjustment's decision on an appeal shall be final and effective after the board's written decision is signed and filed with the community development department, which serves as the board of adjustment office.

6.9.8 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section 134-8.1.2.G of this article.

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Chapter 134. Zoning

ARTICLE 7. NONCONFORMITIES

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134-7. NONCONFORMITIES

General

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134-7.1 General

7.1.1 INTENT

Nonconformities are created when the zoning regulations that apply to a particular property are changed to no longer allow uses, structures or other development features that have already been lawfully established. The nonconformity regulations of this article are intended to explain the effect of this nonconforming status and help differentiate nonconformities, which have legal status under this zoning ordinance, from zoning violations, which are illegal and subject to penalties and enforcement action. The regulations of this article are also intended to:

- A. Recognize the interests of landowners in continuing to use their property for uses that were lawfully established;
- B. Promote maintenance, reuse and rehabilitation of existing buildings; and
- C. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties.

7.1.2 AUTHORITY TO CONTINUE

Any nonconformity that existed on the effective date specified in section [134-1.3 of this chapter](#) or any lot, structure use or situation that becomes nonconforming upon adoption of any amendment to this zoning ordinance or any amendment of the zoning map after the effective date specified in section [134-1.3 of this chapter](#) may be continued, subject to the regulations of this article.

7.1.3 DETERMINATION OF NONCONFORMING STATUS

- A. The burden of proving that a nonconformity exists, as opposed to a zoning ordinance violation, rests entirely with the subject property owner.
- B. The community development director is authorized to determine whether reliable evidence of nonconforming status has been provided by the subject property owner.
- C. Building permits, lawfully recorded plats, lawfully recorded instruments of conveyance, aerial photography owned by a governmental agency and other official government records that indicate lawful establishment of the use may constitute conclusive evidence of nonconforming status. If such forms of evidence are not available, the community development director is authorized to consider whether other forms of evidence provided

by the subject owner are reliable and adequate to document nonconforming status. Common examples of evidence that may be determined to be reliable and adequate include:

- 1. Professional registrations or business licenses;
 - 2. Rent records;
 - 3. Advertisements in dated publications;
 - 4. Listings in telephone or business directories; and
 - 5. Notarized affidavits affirming the date of lawful establishment of the use or structure.
- D. The community development director's determination of nonconforming status may be appealed in accordance with section [134-6.9 of this chapter](#).

7.1.4 REPAIRS AND MAINTENANCE

- A. Repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless the work increases the extent of the nonconformity or is otherwise expressly prohibited by this zoning ordinance.
- B. If a nonconforming structure or a structure occupied by a nonconforming use becomes unsafe or dangerous, or when a structure is found unfit for human occupancy or otherwise deemed to be a public nuisance, it may not thereafter be used, restored, or repaired, or rebuilt except in conformity with the provisions of the district in which it is located.
- C. Nothing in this section is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized public official, or to prevent re-establishment of a nonconforming household use in a structure which has been repaired or constructed so as to not be unsafe, dangerous, or found unfit for human occupation, and which does not constitute a public nuisance, when allowed by section 134-7.2.5 of this article.

7.1.5 CHANGE OF TENANCY OR OWNERSHIP

Nonconforming status runs with the land and is not affected by changes of tenancy, ownership or management.

134-7. NONCONFORMITIES

Nonconforming Uses

134-7.2 Nonconforming Uses

7.2.1 DESCRIPTION

A nonconforming use is a use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the district in which the use is located. Lawfully established uses that do not comply with separation distance requirements are also deemed to be nonconforming uses.

7.2.2 CHANGE OF USE

- A. Any change of use is subject to design review and compliance pursuant to chapter 135 of this code.
- B. A nonconforming use in any district may be changed only to a use that is allowed in the subject district. Once changed to a conforming use, a nonconforming use may not be re-established.
- C. A nonconforming use located in a district other than an N district, may also be changed to another nonconforming use only if approved in accordance with the Type 1 zoning exception procedures of section [134-6.5 of this chapter](#). In order to approve an administrative exception for a nonconforming use substitution, the community development director must determine that the proposed use substitution will not result in any increase in adverse impacts on the surrounding area when compared to the previous nonconforming use of the property. In making such a determination, the community development director must consider all of the following factors, as applicable:
 1. Traffic to and from the site;
 2. The amount of parking required;
 3. Hours of operation,
 4. Outdoor display, storage and work activities; and
 5. Other factors likely to have an effect on the surrounding area.

7.2.3 EXPANSION

Unless otherwise expressly stated, nonconforming uses may not be expanded or extended to occupy a greater area than was occupied at the time the use became nonconforming unless the expansion reduces or eliminates the nonconformity. A nonconforming use of a portion of a building may be expanded or extended into the remaining portions of the building if the community development director determines that the area of the building in which the expansion is proposed was manifestly arranged and designed for the use. No such use shall be extended to occupy any land outside

any such structure.

7.2.4 MOVEMENT

A nonconforming use may be moved in whole or in part to another location only if the movement or relocation eliminates the nonconformity.

7.2.5 DAMAGE OR DESTRUCTION

- A. If a structure containing a nonconforming one-household or two-household use, which household use was a conforming use pursuant to the city of Des Moines' zoning ordinance and zoning map in effect on December 14, 2019, is damaged or destroyed to any extent and by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming one-household or two-household use may be re-established to the extent that such use existed before the damage, provided that a building permit application to allow the re-establishment is filed with the community development department within six months of the damage or date of inspection finding a public nuisance.
- B. If a structure containing a nonconforming use, other than a nonconforming one-household or two-household use which was a conforming use pursuant to the city of Des Moines' zoning ordinance and zoning map in effect on December 14, 2019, is damaged or destroyed to the extent of 50% or more of its replacement cost at time of damage or destruction, by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may not be re-established. If the structure is damaged or destroyed to the extent of less than 50% of its replacement cost at the time of damage or destruction by any means, including damage or destruction by repair, alteration, replacement or upgrade, exclusive of the foundation, the nonconforming use may be re-established to the extent that such use existed before the damage, provided that a building permit application to allow the re-establishment is filed with the community development department within six months of the damage.
- C. This section does not apply to properties designated a historic district or landmark under chapter 58 of this code or under the National Register of Historic Places.

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Nonconforming Uses

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7.2.6 LOSS OF NONCONFORMING STATUS

- A. If a nonconforming use is changed to a conforming use, no matter how short the period of time, the nonconforming use is deemed abandoned, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.
- B. If a nonconforming use of a structure is abandoned, the use may not be re-established. A nonconforming use is deemed to have been abandoned if during the time that the use is not in place the subject property owner makes any change to the property inconsistent with the resumption of the use. Examples of changes that are inconsistent with the resumption of a use expressly include: combining two or more household units under one water, gas or electric meter or creating an opening between two household units.
- C. If a nonconforming use in an N district is discontinued for more than one year for any reason whatsoever, the nonconforming use is deemed abandoned and may not be re-established. If a nonconforming use in any district other than an N district is discontinued for more than six months for any reason whatsoever, the nonconforming use is deemed abandoned and may not be re-established.

7.2.7 USE OF OPEN LAND

- A. Nonconforming uses of open land are land uses and activities that meet the definition of a nonconforming use but that include structures that are merely accessory or incidental to the principal use and in the aggregate do not cover more than 10% of the lot. Common examples include storage yards, construction debris sites, vehicle sales lots, vehicle impound yards, auto wrecking, junkyards, and similar open-air uses. Nonconforming uses of open land are subject to the nonconforming use regulations of section [134-6.2 of this article](#), except as modified by the specific regulations of this subsection [134-7.2.7 of this article](#).
- B. A nonconforming use of open land may not be enlarged, increased or extended to occupy a greater area of land than was occupied at the time the use became nonconforming.
- C. If a nonconforming use of open land ceases for any reason for a period of more than six months, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

7.2.8 USES IN FLOODPLAIN AND FLOODWAY

Nonconforming uses, or existing structures in F districts that are occupied in whole or in part by a nonconforming use, may not be enlarged, extended, reconstructed or structurally altered, unless the use is changed to a use permitted in the F district. Such uses or structures may not be moved or relocated unless the movement or relocation eliminates the nonconformity.

7.2.9 NONCONFORMING USE WITHIN MANUFACTURED HOME COMMUNITY OR MOBILE HOME PARK

- A. This section applies to replacement of a pre-existing manufactured, modular, or mobile home, or a pre-existing site-built household unit, within a manufactured home community or a mobile home park.
- B. Unless subsection D of this section applies, a pre-existing manufactured, modular, or mobile home may be replaced with another manufactured, modular, or mobile home, containing no more than the original number of dwelling units, within a manufactured home community or a mobile home park, and the property owner may continue the lawful nonconforming use that had existed relating to the pre-existing home.
- C. Unless subsection D of this section applies, a pre-existing site-built household unit (dwelling) may be replaced with a manufactured, modular, or mobile home or site-built household unit (dwelling) within a manufactured home community or a mobile home park, and the property owner may continue the lawful nonconforming use that had existed relating to the pre-existing home.
- D. A pre-existing manufactured, modular, or mobile home or site-built household unit (dwelling) may not be replaced, and the lawful nonconforming use that had existed relating to the pre-existing home may not be continued, as set forth in this section if any of the following conditions apply:
 - 1. A discontinuance of the pre-existing use is necessary for the safety of life or property;
 - 2. The nonconforming use of the pre-existing manufactured, modular, or mobile home, or pre-existing site-built household unit, has been discontinued for at least one year for any reason whatsoever, unless such discontinuance is caused by circumstances outside the control of the property owner;

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Nonconforming Signs

3. The replacement results in the overall nature and character of the present use being substantially or entirely different from the original lawful pre-existing nonconforming use; or
4. The replacement results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses unless the property owner makes modifications to such shared driveway or sidewalk that extinguishes such obstruction or the effects of such obstruction.

If any of said conditions apply, sections 134-7.1-5 and 134-7.2.1-8 of this article are applicable to the nonconforming use.

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134-7.3 Nonconforming Signs

A nonconforming sign is a sign that was lawfully established on commercial corridors but that no longer complies with applicable zoning ordinance regulations because of the adoption or amendment of regulations after the sign was established.

7.3.1 USE

Nonconforming signs may continue subject to the

regulations of this section.

7.3.2 MOVEMENT

- A. A nonconforming sign may be moved in whole to another location on the same lot only if the movement or relocation eliminates the nonconformity.
- B. A nonconforming general advertising sign may be moved in whole to another lot only if the placement on the new lot conforms with this chapter and subject to credit requirements of section [134-5.8.9 of this chapter](#).

7.3.3 ALTERATION, ENLARGEMENT OR EXPANSION

Nonconforming signs may not be enlarged or altered in a way which increases their nonconformity.

7.3.4 EARNED CREDIT SYSTEM

- A. The owner of a nonconforming general advertising sign may apply to the community development director for an earned credit for the removal of the nonconforming sign. The application may be approved and an earned credit allowed for the removal of the non-conforming general advertising sign only if the following conditions are met:
 1. The sign and the entire supporting structure above grade are removed; and,
 2. The parcel from which the sign was removed may not again be used for the placement of a general advertising sign because of any non-compliance with this chapter; or the recording of a restrictive covenant in a form approved by the city legal department that prohibits the use of the parcel for general advertising.
- B. The amount of approved credits earned for each removed nonconforming general advertising sign face, excluding supporting structure, is limited, as follows:
 1. Two credits are earned for each electronic or multi-vision display sign face that was at least 600 square feet in area;
 2. One credit is earned for each electronic or multi-vision display sign face that was at least 300 square feet in area and less than 600 square feet in area;
 3. Two credits are earned for each non-electronic or non-multi-vision display (static) sign face that was at least 600 square feet in area;

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- 4. One credit is earned for each non-electronic or non-multi-vision display (static) sign face that was at least 300 square feet in area and less than 600 square feet in area.

7.3.5 USE OF EARNED CREDITS FOR CONVERSION TO ELECTRONIC DISPLAY

An applicant for a permit to convert a nonconforming non-electronic or non-multi-vision display (static) general advertising sign on a lot with frontage on a major commercial corridor to an electronic or multi-vision display shall relinquish previously earned credits in the amounts set forth in [Table 7.3-1](#) of this article for each sign face converted to an electronic display or multi-vision display. The total area utilized for an electronic display or multi-vision display on each face of the sign may be no larger than the area of the previously existing sign face.

TABLE 7.3-1. USE OF EARNED CREDITS FOR CONVERSION TO ELECTRONIC DISPLAY

Area of Electronic Display on Converted Sign Structure	Earned Credits to be Relinquished for Converted Sign Face
A digital or multi-vision display sign face at least 300 square feet and less than 450 square feet	2.0 conversion credits
A digital or multi-vision display sign face at least 450 square feet and less than 672 square feet	4.0 conversion credit

7.3.6 DAMAGE OR DESTRUCTION

- A. If a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of its replacement cost at the time of damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign must be removed.
- B. If a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to an extent of less than 50% of its replacement cost at the time of the damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign may be re-established to the extent it existed before the damage, provided that a building permit application to re-establish the sign is filed within six months of the date of damage or destruction.
- C. For purposes of this subsection as it applies to all signs, other than general advertising signs containing

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electronic or multi-vision display sign faces, the phrase "damaged or destroyed" includes removal of the sign face for repair, alteration, replacement or upgrade.

- D. For purposes of this subsection as it applies to general advertising signs containing electronic or multi-vision display sign faces, the phrase "damaged or destroyed" does not include removal of the electronic or multi-vision display sign face for repair or replacement if the sign structure and the sign face type (electronic or multi-vision display) are neither modified nor altered and if the size of the repaired or replacement electronic or multi-vision sign face remains the same as the size of the previously existing electronic or multi-vision sign face.

7.3.7 LOSS OF NONCONFORMING STATUS

- A. If the use of the property containing a nonconforming pole sign or general advertising sign is discontinued for a period of more than six months, or if a new or amended site plan or alternate plan documentation is required by a change in the use or building expansion on the premises, the pole sign or general advertising sign loses its nonconforming status and must be removed immediately.
- B. If a pole sign, other similar sign, or general advertising sign is not used to display a message for a period of six months or more, the sign loses its non-conforming status and must be removed immediately.
- C. When removal of a sign is required, the entire sign structure, including the cabinet, mounting structure, base or supports, must be removed. Free-standing and monument signs must be removed to a depth of at least six inches below grade.

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Chapter 134. Zoning
ARTICLE 8. ADMINISTRATION AND ENFORCEMENT

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134-8.1 Review and Decision-Making Bodies

8.1.1 PLAN AND ZONING COMMISSION

The plan and zoning commission has the powers and duties that are expressly identified in this chapter and in [chapter 82, article II](#) and chapter 135 of this code.

8.1.2 BOARD OF ADJUSTMENT

- A. Composition.** The board of adjustment shall consist of seven members, at least four of whom shall be persons representing the public at large, not involved in the business of purchasing or selling real estate.
- B. Appointment and Terms.** The terms of office of the members of the board of adjustment and the maner of their appointment shall be as provided by statute.
- C. Officers.** The board of adjustment must elect a chairperson and vice chairperson. The secretary of the board shall be staff, as assigned, from the community development department.
- D. Rules of Procedure.** The board of adjustment must adopt rules necessary for the conduct of its affairs.

E. Meetings. Board of adjustment meetings must be held at the call of the chairperson and at other times as the board of adjustment may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings of the board of adjustment must be open to the public, in accordance with chapter 21 of the Iowa Code. The board of adjustment must keep minutes of its proceedings and official actions. Minutes must indicate the vote of each member on each question including absences and abstentions, all of which must be open public record on file in the community development department, which serves as the office of the board of adjustment. The presence of four members shall be necessary to constitute a quorum.

F. Powers and Duties

1. The board of adjustment has the powers and duties that are expressly identified in this zoning ordinance, including hearing and acting on applications for zoning variances, zoning use variances, zoning exceptions, conditional uses and appeals of administrative decisions.
2. Notwithstanding the foregoing, the board of adjustment is expressly prohibited from hearing

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appeals or considering variances or exceptions to the wireless telecommunication provisions of this chapter that include procedural or other requirements set forth in Iowa and federal law, including but not limited to Iowa Code Chapter 8C, the Spectrum Act, and similar FCC regulations. In addition, if the denial of an appeal or variance or exception will result in denial of wireless telecommunications services, or if approval of an appeal or variance or exception is necessary due to the type of technology proposed by an applicant, then the board of adjustment shall grant the relief sought, which may be subject to conditions allowed by city, state, and federal law.

G. Appeals to District Court. Any taxpayer or any officer, department, board or bureau of the city or any persons jointly or severally aggrieved by any decision of the board of adjustment may present to a court of record a petition for writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the community development department, which serves as the office of the board of adjustment.

8.1.3 COMMUNITY DEVELOPMENT DIRECTOR

The community development director has the powers and duties expressly identified in this chapter. For purposes of this chapter, "community development director" includes designees of the community development director.

8.1.4 ZONING ENFORCEMENT OFFICER

There is established within the community development department a zoning enforcement officer who shall be appointed by and responsible to the community development director.

A. Powers and Duties.

The zoning enforcement officer shall exercise the following powers and duties:

1. The zoning enforcement officer or the officer's designees shall exercise all enforcement powers under this chapter, including to the investigation of complaints of zoning violations, issuance of notices and municipal infraction citations to violators, and the preparation and submission to the legal department of reports of those zoning violations which continue unabated after exhaustion of reasonable administrative

remedies toward their abatement, for such legal action as the facts of each report may require.

2. In all cases in which the city commences court action, the zoning enforcement officer shall cooperate with the assistant city attorney by performing such additional investigative work as the assistant city attorney shall require.
3. The zoning enforcement officer shall attend the meetings of the plan and zoning commission and the board of adjustment as requested by those bodies, shall investigate and review all cases presented to the board of adjustment, and shall advise that body on those cases upon request.
4. If the legal department, after analysis of the report, institutes legal proceedings, the zoning enforcement officer will cooperate fully with the legal department in the perfecting of such proceedings.
5. The zoning enforcement officer or the officer's designees may provide a written determination regarding the application of this chapter and related land use regulations in this code to a specific site to any person requesting such information upon receipt of a fee in the amount set in the schedule of fees adopted by the city council by resolution.

134-8.2 Enforcement

8.2.1 RESPONSIBILITY FOR ENFORCEMENT

The zoning enforcement officer, under the direction and supervision of the community development director, is responsible for enforcing this chapter. All departments, officials and employees vested with the authority to review, recommend or issue development approvals, permits or licenses must act in accordance with the provisions of this chapter.

8.2.2 RIGHT TO INSPECT PROPERTY

The zoning enforcement officer or the officer's designees are authorized to enter at reasonable times onto and into open unobstructed property and structures to inspect, and a property owner or occupant is required to allow such inspection. If entry onto real estate for the purposes described in this chapter is refused, the community development director may pursue a municipal infraction or obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection or otherwise as provided by law.

8.2.3 VIOLATIONS

Unless otherwise expressly allowed by this chapter or state law, any violation of a provision of this chapter is subject to the remedies and penalties provided for in this chapter.

8.2.4 CONTINUING VIOLATIONS

Each day that a violation continues constitutes a separate violation of this chapter.

8.2.5 REMEDIES AND ENFORCEMENT POWERS

The city has all remedies and enforcement powers allowed by law, including, without limitation, all of the following:

A. Fines. Any person violating any provisions of this chapter or failing to comply with any of its requirements may be deemed guilty of a misdemeanor or municipal infraction punishable in accordance with chapter [1-15 of this code](#).

B. Withhold Permit

1. The community development director may deny or withhold all zoning-related permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an existing violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for subject violation.
2. Instead of withholding or denying a permit or other authorization, the community development director may grant such authorization subject to the condition that the violation be corrected.

C. Revoke Permits

1. A permit, certificate or other form of authorization required under this chapter may be revoked by the community development director when the community development director determines:
 - a. That there are unapproved departures from approved plans or permits; or
 - b. That any provision of this chapter or approval previously granted by the city is being violated.
2. Written notice of revocation must be sent by regular mail to the subject property owner or any party the zoning enforcement officer may deem responsible.

D. Stop Work

1. If the zoning enforcement officer finds work being performed in a manner contrary to the provisions of this chapter or in a dangerous or unsafe manner, the zoning enforcement officer is authorized to issue a stop work order.
2. A stop work order must be in writing and must be posted at the site of the violation. A copy of the order must also be provided to the owner of the subject property, to the owner's authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work must cease immediately. The stop work order must state the reason for the order and the conditions under which the cited work is authorized to resume.
3. Any person who continues any work after having been provided with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe conditions, is subject to penalties and enforcement as set out in this section.

E. Injunctive Relief. The city may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted under this chapter or previous zoning ordinances.

F. Forfeiture and Confiscation of Signs on Public Property. Any sign installed or placed on public property, including rights-of-way, except in compliance with the regulations of this chapter will be considered forfeited to the public and subject to confiscation. In addition to other remedies and penalties of this article, the city has the right to recover from the sign owner or person who placed the sign, the full costs of sign removal and disposal.

G. Abatement

1. The city may seek a court order for abatement, injunction or other action requiring the owner to correct a violation and order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property on which the violation occurred, or both.
2. The city may seek a court order authorizing the city to abate or correct the violation and order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed

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against the property on which the violation occurred, or both.

H. Other Penalties, Remedies and Powers. The city may seek such other penalties and remedies as are provided by law. The city may institute any other proper action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use of any building, structure or sign; to restrain, correct, or abate such violation; to prevent the occupancy of the building, structure, land; or to prevent any illegal act, conduct, business or use in or about the premises.

I. Continuation of Previous Enforcement Actions. Nothing in this chapter prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous ordinances and laws.

J. Stay of Enforcement Proceedings. An appeal stays all enforcement proceedings in furtherance of the action appealed from, unless the zoning enforcement officer certifies to the board, after notice of appeal shall have been filed with him or her, that, because of the facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the zoning enforcement officer and on due cause shown.

8.2.6 REMEDIES CUMULATIVE

The remedies and enforcement powers established in this chapter are cumulative, and the city may exercise them in any combination or order.

8.2.7 PERSONS SUBJECT TO PENALTIES

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

8.2.8 ENFORCEMENT PROCEDURES

A. Non-Emergency Matters. In the case of violations of this chapter that do not constitute an emergency or require immediate attention, the subject property owner must be given notice by regular mail. Notices of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

B. Emergency Matters. In the case of violations of this chapter that constitute an emergency situation as a result of public health or safety concerns if not remedied immediately, the city may use the enforcement powers available under this chapter without prior notice to the subject property owner, including the authority to abate or correct the violation.

8.2.9 APPEALS

A determination made by the community development director, zoning enforcement officer or other administrative officials that a zoning ordinance violation has occurred may be appealed by the affected party in accordance with section 134-6.9 of this chapter.

Chapter 134. Zoning

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134-9.1 General

Words and terms expressly defined in this chapter have the specific meanings assigned unless the context clearly indicates another meaning. Words and terms that are not expressly defined in this chapter have the meaning set forth in the most current edition of the Merriam-Webster Dictionary.

134-9.2 Use Classifications

See section 134-3.2 of this chapter for an explanation of the use categorization system used in this chapter.

134-9.3 Measurement

Unless otherwise specified in this chapter, for purposes of measuring compliance with separation distance

134-9. DEFINITIONS

Terms Beginning with "A"

requirements, measurements must be taken on a direct line following the shortest distance from the property line of the proposed use to property line of lot occupied by the use, district or area from which separation is required.

134-9.4 Terms Beginning with "A"

Abut (or abutting): to touch or share a contiguous boundary or border.

Accessory building: a structure on the same lot with, separate from, and of a nature customarily incidental and subordinate to the principal structure and intended for the storage of equipment and materials of the principal use. Trailers, semi-trailers, tents, motor vehicles and component parts thereof are not accessory buildings.

Accessory use: a use on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

Adjacent: lying next to, near, or in the immediate vicinity.

Alcoholic beverage: means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer and includes all of the component ingredients of the beverage whether mixed into one beverage or sold separately to the same customer, regardless of intent.

Alley: any thoroughfare or public way that has been dedicated to the public or conveyed to the city by deed, easement, plat, or otherwise acquired by the city for alley right-of-way purposes.

Awning: a roof-like structure typically made of cloth, metal or other material attached to a frame that extends from and is supported by a building. Awnings are typically erected over a window, doorway or building front and they may be raised or retracted to a position adjacent to the building.

134-9.5 Terms Beginning with "B"

Building: any structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property.

134-9.6 Terms Beginning with "C"

Campus: a building or group of buildings which is designed to use common facilities such as parking and sidewalks.

Canopy: a permanent roofed structure, including marquees and awnings, either attached to and

supported by a building or freestanding, and may be either a private canopy which projects over private property or a public canopy which projects over public property.

Channel: a natural or artificial watercourse of perceptible extent, with a definite bed and definite banks to confine and to conduct continuously or periodically flowing water.

Check: a check, draft, share draft, or other instrument for the payment of money.

134-9.7 Terms Beginning with "D"

Development: Any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity or use of land, such as an increase in the number of household units in a structure or a change to a commercial or industrial use from a less intensive use; any activity that alters a shore, river, stream, lake, pond, woodlands, wetland, endangered species habitat, aquifer or other resource area.

Dwelling: any building or portion thereof which is designed or used exclusively for residential purposes but not including a tent, cabin, trailer, camper, motor home or mobile home. May also be referred to in this chapter as "household".

Dwelling unit: See "Household unit".

134-9.8 Terms Beginning with "E"

RESERVED

134-9.9 Terms Beginning with "F"

Factory-built housing: a factory-built structure designed for longterm residential use. For the purposes of this chapter, factory-built housing consists of three types: Modular homes, mobile homes, and manufactured homes.

Factory-built structure: any structure which is, wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site.

Flood: a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain: any land area susceptible to being

inundated by the water from any source during the 100-year flood. The floodplain includes all areas designated as "A-" zones on the flood insurance rate maps, including A, AE, A1-A30 and AO.

Floodway: the channel of a river or other watercourse and the adjacent land areas designated to carry the waters of a 100-year flood without increasing the water surface elevation of that flood more than 1.0 foot. Floodways include the areas designated as Floodway Areas within Zone AE on the flood insurance rate maps in the flood insurance studies. The city council may by ordinance designate additional floodway areas which have been identified through engineering studies.

Foot-candle: a measure of illumination, the amount of light falling onto a surface. One lumen of light, shining evenly across one square foot of surface, illuminates that surface to one foot-candle.

134-9.10 Terms Beginning with "G"

RESERVED

134-9.11 Terms Beginning with "H"

Home occupation: an accessory use of a household unit for business or commercial purposes.

Household: one or more persons, functioning as a single housekeeping unit, occupying a single household unit in compliance with the occupancy limitations set forth in the International Property Maintenance Code. The number of occupants per household shall not exceed the number of occupants permitted by the minimum area requirements of the occupancy limitations set forth in the International Property Maintenance Code.

Household unit or dwelling unit: a room or group of rooms which is arranged, designed or used as living quarters for the occupancy of one household containing bathroom and kitchen facilities.

134-9.12 Terms Beginning with "I"

International Property Maintenance Code: the International Property Maintenance Code, published by the International Code Council, as adopted and amended in chapter 60 of this code.

134-9.13 Terms Beginning with "J"

Junk: all old or scrap copper, brass, lead, or any other non-ferrous metal; old rope, rags, batteries, paper, trash, rubber debris, waste, used lumber or salvaged wood; dismantled or inoperable vehicles, unsafe

vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel, or other old or scrap ferrous material; old discarded glass, tinware, plastic, or old discarded household goods or hardware; cut brush, including dead or decaying plant material, except a contained compost pile or orderly stacked firewood if cut in lengths less than or equal to four feet.

134-9.14 Terms Beginning with "K"

Kennel: any premises on which four or more dogs, six months old or older, are kept.

134-9.15 Terms Beginning with "L"

Lawfully Established: a use, structure, lot or sign that was established in conformance with all applicable zoning regulations in effect at the time of its establishment.

Light, flashing: A light source or other image that in whole or in part physically changes in light intensity or gives the appearance of such change.

Liquor store: an establishment or place of business primarily engaged in the sale for off-premise consumption of alcoholic liquors, wine and beer where more than 40% of gross receipts is derived from the sale of alcoholic liquors, wine, beer and tobacco.

Lot: a parcel of land which may or may not have been created by subdivision plat or plat of survey. Such lot may consist of:

1. A single pre-existing lot;
2. A portion of a pre-existing lot;
3. A combination of complete pre-existing lots; of complete pre-existing lots and portions of pre-existing lots; or of portions of multiple pre-existing lots; or
4. A parcel of land described by metes and bounds.

Lot, corner: a lot abutting upon two or more streets at their intersection.

Lot, pre-existing: a lawfully created lot, shown on a plat recorded in the office of the county recorder prior to the effective date of this chapter.

Lot frontage: the portion of a lot which abuts a public street. Each side of a lot so abutting a public street shall be considered as separate lot frontage.

Lot lines: the lines bounding a lot.

Lot width: the width of a lot measured at the required front yard setback line and at right angles to its depth.

134-9. DEFINITIONS

Terms Beginning with "M"

The minimum lot width shall be maintained from the required front yard setback line to the front of the principal building.

134-9.16 Terms Beginning with "M"

Manufactured home: a factory-built, single-household structure, which is manufactured or constructed under the authority of 42 USC 5403, Federal Manufactured Home Construction and Safety Standards, and is to be used as a place for human habitation, but which is not constructed with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. A mobile home is not a manufactured home unless it has been converted to real property and is taxed as a site-built dwelling. For the purposes of this chapter, a manufactured home shall be considered the same as any site-built single-household detached dwelling.

Mobile home: any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons but the term also includes any such vehicle with motive power not registered as a motor vehicle in this state. A mobile home is factory-built housing built on a chassis. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. However, certain mobile homes may be classified as "manufactured homes." Nothing in this chapter shall be construed as permitting a mobile home in other than an approved mobile home park, unless such mobile home is classified as a manufactured home.

Mobile home park or trailer park: any lot or portion of a lot upon which two or more mobile homes or trailers occupied for dwelling or sleeping purposes are located regardless of whether or not a charge is made for such accommodations. Mobile home parks are subject to the regulations of section 135-2.21 of this code.

Modular home: factory-built housing certified as meeting the state building code as applicable to modular housing. Once certified by the state, modular homes shall be subject to the same standards as site-

built homes.

Multi-tenant development: a development typically under unified ownership and control consisting of two or more business establishments, which may be on the same lot or on separate lots. The tenants of multi-tenant development typically share vehicle access and parking facilities.

134-9.17 Terms Beginning with "N"

RESERVED

134-9.18 Terms Beginning with "O"

Occupied: See "Used".

134-9.19 Terms Beginning with "P"

Principal use or primary use: the main use of land or structures as distinguished from an accessory use.

134-9.20 Terms Beginning with "Q"

RESERVED

134-9.21 Terms Beginning with "R"

RESERVED

134-9.22 Terms Beginning with "S"

Sex acts: any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitute therefor in contact with the genitalia or anus.

Sexual encounter center: any business, agency or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in sex acts or exposing specified anatomical areas.

Specified anatomical areas: Human genitals, pubic region, buttocks, and female breasts below a point immediately above the top of the areola.

Sign: any structure, including a device or display used primarily for visual communication for the purpose of or having the result of bringing the subject thereto to the attention of a person, group of persons, or the

public generally. The term "sign" includes but is not limited to any and all reading matter, letters, numerals, pictorial representations, emblems, trademarks, inscriptions, and patterns, whether affixed to a building, or otherwise depicted on a building, or separate from any building. Signs located completely within an enclosed building, and not exposed to view from a street, are not considered a "sign" for purposes of this chapter or for purposes of the design regulations set forth in chapter 135 of this code.

Sign, electronic display: any portion of a sign upon which alphabetic, pictographic or symbolic informational content can be changed or altered on a display screen composed of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices, including programmable microprocessor controlled electronic displays; and, the projection of images or messages with these characteristics by any other onto the sign face.

Sign face: All of the surface of a sign used or designed for the presentation of a single visual display, including edges, borders and trim, and excluding the supporting structure. Each separate surface of a sign used or designed for the presentation of a separate visual display shall constitute a separate sign face.

Sign, freestanding: a sign that is not attached to any building, including monument signs, and pole signs.

Sign, illuminated: Any sign, other than an electronic display, that is directly lighted by any constant light source, internal or external, except light sources clearly operated for the purpose of lighting the general area in which the sign is located rather than the sign itself.

Sign, indirectly illuminated: a sign illuminated by artificial light reflecting from the sign face, where the light source is not visible from any street right-of-way.

Sign, internally illuminated: a sign illuminated by an artificial light source which is not visible but which reaches the eye through a diffusing medium.

Sign, monument: a freestanding sign built on grade that is not a pole sign or a temporary sign.

Sign, multi-vision display: any portion of a sign where the display surface is comprised of rotating elements that permit the display of different messages by the rotation of the elements.

Sign, pole: a freestanding sign that is not a portable sign and that is not a monument sign.

Sign, portable: a sign not permanently anchored or secured.

Sign, projecting: A sign that is affixed to a building

wall, canopy, awning or marquee that extends horizontally more than 15 inches from the wall, canopy, awning or marquee and that may extend above the lowest point of the roof or top of the parapet wall.

Sign, roof: a sign erected upon or above a roof or parapet of a building.

Sign, wall: A sign affixed to a building wall, canopy, awning, marquee or parapet wall that does not extend horizontally more than 15 inches from the wall, canopy, awning, marquee, or parapet wall and shall not extend above the lowest point of the roof or top of the parapet wall.

Single housekeeping unit: an interactive group of persons jointly occupying a single household, including joint access to and use of all common areas including living, kitchen and eating areas within the household unit, and sharing household activities and responsibilities such as chores, expenses, meals and maintenance.

Small engine: a motor used to power tools, professional tools, and equipment including generators, lawnmowers and other outdoor power tools producing an average output that ranges around 25 horsepower, which is usually powered by gasoline and that varies in size, shape and compression process depending on its configuration.

Story: that portion of a building above grade and between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and the ceiling or roof next above it, provided the space is of a height appropriate for normal human use and not a crawl space. Also referred to in this chapter as "floor".

Story, upper: the stories in a building located above the ground story of the building. Also referred to in this chapter as "upper floor".

Street facade or street-facing facade: the facade of a building that faces a street right-of-way.

Street line: the right-of-way line of a street.

Street, public: any thoroughfare or public way that has been dedicated to the public or conveyed to the city by deed, easement, or plat, or otherwise acquired by the city, for street right-of-way purposes.

Structural alteration: any replacement or changes in a type of construction or in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, beyond ordinary repairs and maintenance.

Structure: anything constructed or erected with a

134-9. DEFINITIONS

Terms Beginning with "T"

fixed location on the ground, or attached to something having a fixed location on the ground. Structures include buildings, walls, fences, gates, towers, factory-built homes, signs, utility poles, flagpoles, yard lights and storage tanks. For the purposes of this chapter, streets, sidewalks, alleys, hard-surfaced parking areas and underground utilities are excluded from the definition of the term "structure."

134-9.23 Terms Beginning with "T"

Tobacco store: a place of business primarily engaged in the retail sale of tobacco and tobacco related products, provided however that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer, and all sales of alcoholic liquor, wine or beer are for off-premises consumption only.

134-9.24 Terms Beginning with "U"

Used or occupied: actively and continuously occupied by and functioning for a permitted use.

134-9.25 Terms Beginning with "V"

Vehicle, inoperable: any motor vehicle, recreational vehicle, boat, trailer or semitrailer which lacks a current registration or component part which renders the vehicle unfit for legal use upon the public right-of-way.

Vehicle, unsafe: any motor vehicle, recreational vehicle, boat, trailer or semitrailer:

1. With a missing, broken or shattered windshield or any exposed broken glass edges.
2. With a missing fender, door, hood, steering wheel, trunk top, or trunk handle.
3. Which has become the habitat of rats, mice, snakes, or any other vermin or insects.
4. Left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or welfare.
5. Which because of its condition constitutes a threat to the public health, safety or welfare.

Vision clearance triangle: at street intersections, an area required to be free from obstructions pursuant to section 114-14 of this code or as otherwise determined by the city engineer; at the intersection of any driveway and a public right-of-way, a triangular area above a height of two feet above grade level formed by the intersection of the edge of the driveway with the right-of-way line, and a line joining points on the edge of the driveway and the right-of-way line 15 feet from

the point of intersection. The vision clearance triangle may extend upon an abutting property. However, in no case shall there be any interference with required sight distance as determined by the city engineer.

134-9.26 Terms Beginning with "W"

RESERVED

134-9.27 Terms Beginning with "X"

RESERVED

134-9.28 Terms Beginning with "Y"

Yard: the unoccupied and unobstructed space that exists between a building and a lot line.

Yard, front: a yard extending from the front facade of the principal building along the full length of the front or primary lot line, between the side lot lines or, on a corner lot, between the side and street-side lot lines.

Yard, rear: a yard extending from the rear building facade along the rear lot line between the side yards or, on a corner lot, the street side and side yards.

Yard, side: a yard extending from the side building facade along the side lot line between the front yard and rear lot line.

Yard, street-side: a side yard abutting a street lot line.

134-9.29 Terms Beginning with "Z"

RESERVED